United States Court of Appeals

for the Second Circuit

APPENDIX

75-7383

United States Court of Appeals

FOR THE SECOND CIRCUIT

USACHEM, INC., a Texas Corporation,

Plaintiff-Appellant,

—against—

MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM,

Defendant-Appellee.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
MAY 15 1975

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DIST./OFFICE	DOCKET YR.	DOCKET NUMBER	FILING DATE MO.	DAY	YEAR	J	N/S	O	R	R 23	DEMAND $	DEMAND OTHER	JUDGE NUMBER	DEM.	Y
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PLAINTIFFS	DEFENDANTS
USAchem, INC.	WALDMAN, MELVIN R. et ano

DOCKET ENTRIES

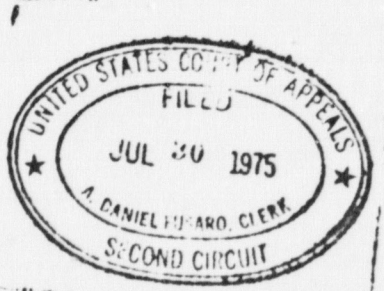
CAUSE violation of contract agreements and unfair competition

75-CV- 170

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☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
	4/9/75	41743	#82	JS-5	
	6/25/75	43699	#104 & 62	JS-6	

Docket Entries

1975	NR.	PROCEEDINGS
April 8	1	Filed complaint–issued summons–original –2 copies & del'vd to Marshal for service.
April 8	2	Notice of deposition and production of documents.
April 8	3	Order and application for order for taking deposition.
April 15	4	Filed Order of Judge Foley (4/15/75) postponing the oral deposition of Defendant, Melvin R. Waldman until 10:00 A.M. on May 1, 1975 and affidavit of Barry R. Fischer.
April 16	5	Filed summons served 4/11/75 on Melvin R. Waldman, Ind. and d/b/a DYNA CHEM.
May 5	6	Filed answer.
May 9	7	Filed Notice of Motion, returnable May 19, 1975, motion and supporting affidavit.
May 14	8	Filed Defendant's demand for Jury trial.
May 19	9	Filed Memorandum in support of plaintiff's motion to compel discovery.
May 19	10	Filed affidavit in opposition to plaintiff's motion.
May 19		Motion granted. Submit order.
May 28	11	Filed Order of Judge Foley (5/28/75) granting plaintiff's motion, etc.

Docket Entries

1975	NR.	PROCEEDINGS
May 29	12	Filed Notice of Motion, returnable June 2, 1975 at Albany, Motion for Preliminary Injunction, with supporting affidavit.
June 2	13	Filed Affidavit in opposition to motion for preliminary injunction.
June 2	14	Filed Affidavit in support of motion for preliminary injunction.
June 2	15	Filed Affidavit of Norman Steinman.
June 2	16	Filed Invoices—Dyna-Chem.
June 2	17	Filed Transcript.
June 2		Motion for Preliminary Injunction, by plaintiff — Decision Reserved. Further briefs to be filed by June 9, 1975.
June 9	18	Filed Supplementary Attorneys' Affidavit in opposition to plaintiff's Motion.
June 9	19	Filed Memorandum of Law in opposition to plaintiff's motion for preliminary injunction.
June 9	20	Filed attorneys' affidavit in opposition to plaintiff's motion for preliminary injunction.
June 9	21	Filed Supplementary Affidavit.
June 9	22	Filed Supplementary affidavits in support of motion for preliminary injunction.

Docket Entries

1975	NR.	PROCEEDINGS
June 9	23	Filed Supplemental Memorandum in Support of Preliminary Injunction.
June 11	24	Filed letter from DeGraff, Foy, Conway and Holt-Harris, Esqs. to Judge Foley dated June 11, 1975.
June 11	25	Filed affidavit in support of motion for preliminary injunction.
June 17	26	Filed Memorandum--Decision and Order of Judge Foley (6/17/75) denying and dismissing the motion for a preliminary injunction.
June 18	27	Filed reply to counterclaim.
June 25	28	Filed Notice of Appeal.
July 14	29	Filed Affidavit of Harold Kimmel.
July 16	30	Filed Scheduling Order.
July 21	31	Filed Examination of Norman Steinman.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

3a

USAchem, INC.
Plaintiff-Appellant

vs

MELVIN R. WALDMAN, et ano
Defendant-Appellee

Northern District of New York
Civil No. 75-CV-170

I, J. R. Scully, Clerk of the District Court of the United States for the Northern District of New York, DO HEREBY CERTIFY that the foregoing docket entries and original papers numbered from 1 to 362 inclusive, constitute the Record on Appeal in the above entitled action; and

I DO FURTHER CERTIFY that the time to file the Record of Appeal expires

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of said Court to be hereto affixed at the City of Utica, New York, this 29th day of July, 1975.

J. R. SCULLY, CLERK
U. S. District Court

By: Allen B. Doggett
Deputy Clerk

FILED
JUL 30 1975

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

ALBANY DIVISION

USAchem, INC., a Texas Corporation, Plaintiff, -against- MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM, Defendants.	Civil Action No. 75-CV-220 SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon De Graff, Foy, Conway and Holt-Harris, plaintiff's attorneys, whose address is 90 State Street, Albany, New York 12207, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so judgment by default will be taken against you for the relief demanded in the complaint.

J. R. Scully
Clerk of Court

Dated: April 8, 1975

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

ALBANY DIVISION

5a

USAchem, INC., a Texas Corporation,	)	
Plaintiff,	)	Civil Action No. [illegible]
against	)	
MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM,	)	COMPLAINT
Defendants.	)	

Plaintiff, USAchem, Inc. ("USAchem"), by its attorneys, DeGraff, Foy, Conway and Holt-Harris, complains against the Defendants, Melvin R. Waldman and Melvin R. Waldman, doing business as DYNACHEM, as follows:

FIRST CLAIM FOR RELIEF

1. USAchem, Inc., is a Texas corporation having its principal office in Irving, Dallas County, Texas. USAchem is licensed to do business in the State of New York.

2. Upon information and belief, Defendants, Melvin R. Waldman and Melvin R. Waldman d/b/a DYNACHEM (hereinafter collectively called "Waldman"), 11 Vatrano Lane, Loudonville, New York 12211, are residents of and do business in the State of New York.

3. This is a civil action based on diversity of citizenship wherein the matter in controversy exceeds the sum of TEN THOUSAND and no/100 ($10,000.00) DOLLARS, exclusive of interest and costs, in which USAchem alleges violations of covenants not to compete contained in employment contracts and unfair competition.

4. As a result of a September 6, 1972, merger USAchem is the successor in interest to all of the assets, properties,

choses in action and rights of National Chemsearch Corporation of New York, Inc., and all references herein to USAchem refer collectively to it and National Chemsearch Corporation of New York, Inc.

5. USAchem and its related division, National Chemsearch Corporation of New York, Inc. (hereinafter referred to as "National Chemsearch") are engaged in the manufacture, distribution and sales of disinfectants, soaps, detergents, cleaners, chemical specialities, paints, water treatments, maintenance chemicals, chemicals for the control of water pollution and chemicals for the improvement of turf, lawn and ground, insecticides, adhesives, glues, germicides, specialty coatings, degreasing and sanitary supply and floor maintenance materials and equipment and related products (all collectively hereinafter referred to as "products") throughout the United States. As a result of such manufacture, sale and distribution, and through advertising, research and product development, USAchem, at great expense, has succeeded in establishing throughout the United States, including the State of New York, a valuable and extensive trade and business, trade name and good will for USAchem, including National Chemsearch, and its products among its customers, all having a value in excess of TEN THOUSAND and no/100 ($10,000.00) DOLLARS.

6. In connection with the sales and distribution of its products, USAchem employs commission salesmen to solicit orders for its products in various territories in the United States, including the State of New York, and a large part of its business depends upon the orders secured by such salesmen. Such sales representatives have been and are continuously provided with confidential material documents and supplies and constantly trained, aided and supervised by sales managers employed by USAchem.

7. Upon information and belief, on or about January 19, 1968, USAchem employed Waldman pursuant to a Sales Representative's Agreement, a copy of which is attached hereto and made a part hereof as Exhibit "A", for the following territory.

> Albany, Greene and Schoharie Counties in the State of New York.

8. Upon information and belief, on or about May 22, 1972, Waldman's Sales Representative's Agreement was amended, a copy of which amendment is attached hereto and made a part hereof as Exhibit "B", to include the following territories:

> Rensselaer and Columbia Counties in the State of New York.

9. Upon information and belief, on or about February 1, 1970, USAchem and Waldman entered into a District Sales Manager's Agreement, a copy of which is attached hereto and made a part hereof as Exhibit "C". Under said Agreement, Waldman was to operate as a District Sales Manager out of USAchem's office in Loudonville, New York.

10. Upon information and belief, on or about February 3, 1975, Waldman resigned from his employment with USAchem.

11. Upon information and belief, following Waldman's employment in 1968 and at all times thereafter until Waldman's resignation, USAchem employed Waldman as a sales representative and District Sales Manager for its National Chemsearch Division in the aforesaid areas within the State of New York in accordance with the terms of said employment agreements and USAchem, at substantial expense to it, continuously trained him as a salesman, and sales manager and furnished him with various valuable confidential documents, materials and supplies pertaining to USAchem's business, its

products, methods of operation, and customer lists within the sales territory defined in said employment agreements, all for his use and benefit in the performance of his duties of employment with USAchem and for no other person, firm or corporation.

12. Upon information and belief, USAchem has fully performed all of its obligations under the said employment contracts marked Exhibits "A", "B", and "C".

13. Upon information and belief, by the terms of paragraph 4 of the said Sales Representatives Agreement (Exhibit "A") and the amendment thereto (Exhibit "B") Waldman covenanted and agreed with Plaintiff that:

a. "For a period of eighteen (18) months immediately following the expiration or termination of his employment (i) he will not at any time for himself or on behalf of any other person(s), firm(s), partnership(s), or corporation(s), sell, offer for sale, or solicit the sale of disinfectants, soaps, detergents, chemical specialties, paints, water treatments, maintenance chemicals, cleaners, insecticides, adhesives, glues, paper products for industry and institutions, degreasing and sanitary supply and floor maintenance materials and equipment within the assigned territory, viz:

> Albany, Greene and Schoharie Counties; and Rensselaer and Columbia Counties in the State of New York.

b. He will not in any way, directly or indirectly, for himself or on behalf of or in conjunction with any other person(s), partnership(s), firm(s), or corporation(s), solicit, divert, take away or attempt to take away any of the Company's customers or the business or patronage of any such customers located within said assigned territory; and he will not in any way, directly or indirectly, for himself or on behalf of or in conjunction with any person(s), partnership(s), firm(s) or corporation(s), solicit, entice, hire employ or endeavor to employ any of the Company's and its affiliated associated companies' employees."

Within said period of time, directly or indirectly, engage in or enter the employment of or act as a sales agent or broker for the products of or as an advisor or constultant to any person(s), firm(s), partnership(s) or corporation(s) engaged in or about to become engaged in the manufacture, distribution, or sale of disinfectants, soaps, detergents, cleaners, insecticides, chemical specialties, paints, water treatments, maintenance chemicals, adhesives, glues, paper products for industry and institutions, degreasing and sanitary supply and floor maintenance materials and equipment within the assigned territory.

9a

d. For a period of eighteen (18) months immediately following the expiration or termination of such employment with or without cause, including without limitation, termination by mutual agreement, that he will not at any time for himself or on behalf of any other Sales Repersentative or former Sales Representative of Company or any of its subsidiaries, affiliates, successors or associated companies, sell, offer for sale or solicit the sale of disinfectants, soaps, detergents, cleaners, insecticides chemical specialties, paints, water treatments, maintenance chemicals, adhesives, glues, paper products for industry and institutions, degreasing and sanitary supply and floor maintenance materials and equipment and any other products of Company, within the assigned or former assigned territory of such other Representative.

e. In the event of violation by Representative of any one or more of the covenants contained in this paragraph, it is agreed that the term of each such covenant so violated shall be automatically extended for a period of eighteen (18) months from the date on which Representative permanently ceases such violation or for a period of eighteen (18) months from the date of the entry by a court of competent jurisdiction of a final order or judgment enforcing such covenant(s), whichever period is later.

f. He shall not at any time, either during his employment or after the termination of such employment, divulge to others or use for his own benefit any confidential information obtained during the course of his employment by Company relating to sales, formulae, processes, methods, machines, manufactures, compositions, ideas, improvements or invention belonging to or relating to the affairs of Company, its subsidiaries, affiliates, successors, or associated companies.

g. He agrees during the term of said employment that he will devote his entire time and attention exclusively to the business and interests of the Company and that he will perform to the entire satisfaction of the Company, such duties as may be assigned to him and that he will do his utmost to further enhance and develop the business interests and welfare of the Company.

14. Upon information and belief, by the terms of paragraphs 4, §A and 6B of the said District Sales Manager's Agreement (Exhibit "C"), Waldman covenanted and agreed with Plaintiff that:

a. during the term of his employment or continued employment by Company and for a period of eighteen (18) months immediately following the expiration or termination of such employment for any reason or reason (i) he will not at any time for himself or on behalf of any other person(s), firm(s), partnership(s), or corporation(s), sell, offer for sale, or solicit the sale of products similar to Company's Products (a) in or within a ninety (90) mile radius of the city of Loudonville, New York., and/or (b) in or within any County (or Parish) or other place in the United States in which District Sales Manager shall have performed duties for Company and its affiliated and associated companies under and by virtue of his employment or continued employment, and/or (c) in any city, town, borough, township,village, or other place in the United States in which the Company then has an office, warehouse, or place of business; (ii) he will not in any way, directly or indirectly,for himself or on behalf of, or in conjunction with, any other person(s), partnership(s), firm(s) or corporation(s), solicit, divert, take away, or attempt to take away any of the Company's customers, or the business or patronage of any such customers, located (a) in or within a ninety (90) mile radius of the city of Loudonville, New York, and/or (b) in or within any

County (or Parish) or other place in the United States in which the District Sales Manager shall have performed duties or rendered services for Company and its affiliated and associated companies under and by virtue of his employment, and/or (c) in any city, town, borough, township, village or other place in the United States in which the Company then has an office, warehouse or place of business (iii) he will not at any time for himself or on behalf of any other person(s), firm(s), partnership(s) or corporation(s), train, act as sales trainer, assist and supervise salesmen or perform similar services as those performed for the Company, including but not limited to, interviewing and hiring salesmen and other personnel, (a) in or within a ninety (90) mile radius of the city of Loudonville, New York, and/or (b) in and within any County (or Parish) or other place in the United States in which the District Sales Manager shall have performed duties for Company and its affiliated and associated companies under and by virtue of his employment, and/or (c) in any city, town, borough, township, village or other place in the United States in which the Company then has an office, warehouse or place of business.

b. He will not within said period of time, directly or indirectly, engage in or enter the employment of or act as a sales agent or broker for the products of or as an advisor or consultant to any person(s), firm(s), partnership(s) or corporation(s) engaged in or about to become engaged in the manufacture, distribution or sale of products similar to Company's Products, (a) in or within a ninety (90) mile radius of the city of Loudonville, New York, and/or (b) in and within any County (or Parish) or other place in the United States in which the District Sales Manager shall have performed duties for Company and its affiliated and associated companies under and by virtue of his employment or continued employment, and/or (c) in any city, town, borough, township, village or other place in the United States in which the Company then has an office, warehouse or place of business.

c. For a period of eighteen (18) months immediately following the expiration or termination of such employment with or without cause, including without limitation, termination by mutual agreement, that he will not at any time

for himself or on behalf of any other District Sales Manager, former District Sales Manager, Sales Representative or former Sales Representative of Company or any other employee or former employee of Company or any of its subsidiaries, affiliates, successor associated companies, sell, offer for sale or solicit the sale of products similar to Company' Products, in any area or place where such District Sales Manager or former District Sales Manager, Sales Representative, former Sales Representative or other former employee of Company has performed duties for Company and its affiliated and associated companies or within the assigned or former assigned territory of such other Representative or former Representative of Company or its associated or affiliated companies.

d. He will not for a period of eigthteen (18) months immediately following the expiration or termination of such employment, in any way, directly or indirectly, for himself or on behalf of or in conjunction with any other person(s), partnership(s), firm(s) or corporation(s), solicit, entice, hire, employ or endeavor to employ any of the Company's and its affiliated and associated companies' employees located (a) in or within a ninety (90) mile radius of the city of Loudonville, New York, and/or (b) in and within any County (or Parish) or other place in the United States in which the District Sales Manager shall have performed duties for Company and its affiliated and associated companies under and by virtue of his employment or continued employment, and/or (c) in any city, town, borough, township, village, or other place in the United States in which the Company then has an office, warehouse or place of business.

e. In the event of the violation by District Sales Manager of any one or more of the covenants contained in this paragraph, it is agreed that the terms of each such covenant so violated shall be automatically extended for a period of eighteen (18) months from the date on which District Sales Manager permanently ceases such violation or for a period of eighteen (18) months from the date of the entry by a court of competent jurisdiction of a final order or judgment enforcing such covenant(s), whichever period is later.

f. He shall not at any time, either during his employment or his continued employment or after the termination of such employment, divulge to others or use for his own benefit any confidential information obtained during the course of

his employment by Company relating to sales, sales publications, sales manuals, formulae, processes, methods, machines, manufactures, compositions, ideas, improvements and inventions belonging to or relating to the affairs of Company, its subdivisions, affiliates, successors or associated companies. 13a

g. He further expressly covenants and agrees that during the term of his employment and at all times thereafter, he shall not divulge to others or use to his own benefit any trade secrets belonging to the Company and its subsidiaries, affiliates, successors or associated companies obtained during the course of his employment or that he became aware of in consequence of his employment.

h. He agrees during the term of his employment or continued employment that he will devote his entire time and attention exclusively to the business and interests of the Company and that he will perform to the entire satisfaction of the Company, such duties as may be assigned to him and that he will do his utmost to further enhance and develop the business interests and welfare of the Company.

15. From and after the employment of Waldman by Plaintiff, as hereinbefore alleged, and then at all times during the period of Waldman's employment, Plaintiff:

a. Fully kept and performed all covenants, agreements, and conditions on its part under and pursuant to the terms of its contracts of employment with Defendant Waldman;

b. Fully trained and gave follow-up training so as to enable Defendant Waldman to sell Plaintiff's products;

c. Made available to, instructed, furnished and advised Defendant Waldman as to its methods and secrets; and

d. Furnished confidential information to Defendant Waldman pertaining to its business, including but not limited to the names and lists of customers and clientele located and doing business within the said sales areas, as described in the Sales Representative's Agreement (Exhibit "A") as amended (Exhibit "B") and the District Sales Manager's Agreement (Exhibit "C") and the price to be charged for each of Plaintiff's numerous products when sold in various quantities.

16. On a date as yet uncertain, the Defendant Waldman organized his own Company, DYNACHEM, to solicit and sell products similar to the products he sold for Plaintiff ithin the area described in the amended Sales Representative's Agreement and the District Sales Manager's Agreement. 14a

17. Commencing on a date as yet uncertain and continuing until the present, the Defendant Waldman, directly and doing business as DYNACHEM, has breached the covenants and agreements of the amended Sales Reprenentative's Agreement and the District Sales Manager's Agreement as set forth in paragraphs "13" and "14" of the Complaint, in that within the prescribed time and territory he has directly or indirectly solicited and sold orders for the sale of products in competition with the Plaintiff's products;solicited and sold orders to Plaintiff's customers; performed services similar to those he performed for Plaintiff, for himself and/or DYNACHEM;acted as a sales agent or broker for DYNACHEM; disclosed confidential information of Plaintiff to DYNACHEM; and used said confidential information of Plaintiff for his own benefit.

18. Defendant Waldman's continuing acts in violation of the said amended Sales Representative's Agreement and the District Sales Manager's Agreement, as set forth in paragraph "17" of this Complaint, the Defendant Waldman and his Company DYNACHEM, have caused great injury to the Plaintiff and its good will, have unfairly acquired confidential information of the Plaintiff, including its customer lists and have profited by the unfair appropriation and solicitation of customers of the Plaintiff.

19. The conduct of the Defendant Waldman and DYNACHEM, as aforesaid, and the continuation thereof, has threatened and caused, and continues to threaten and cause, irrepairable injury to Plaintiff's business and tends to impair and threaten to destroy Plaintiff's valuable good will causing damage to the Plaintiff in excess of TEN THOUSAND and NO/100ths ($10,000.00) DOLLARS.

20. Plaintiff has no adequate remedy at law to protect itself from the violations of the terms and provisions of the contracts of employment between Waldman and Plaintiff which are subjecting Plaintiff to immediate and irrepairable harm, and restraint by injunction is necessary to afford Plaintiff adequate relief.

21. Defendant Waldman has at all times engaged in the conduct alleged herein with the full knowledge and awareness that the same was causing and continuing to cause serious injury and damage to the Plaintiff and the conduct of the Defendant Waldman has been willful, malicious and oppressive as a result of which Plaintiff is entitled to the sum of TWENTY FIVE THOUSAND And No/100ths ($25,000.00) DOLLARS by way of example and punitive damages.

SECOND CLAIM FOR RELIEF

22. Plaintiff repeats and realleges, with the same force and effect as if set forth in full herein, each and every allegation contained in paragraphs "1" through "17" inclusive, of this Complaint.

23. The actions of the Defendant Waldman, directly and doing business as DYNACHEM, as set forth in paragraph 17 of the Complaint, have caused damage to the Plaintiff in excess of TEN THOUSAND And No/100ths ($10,000.00) DOLLARS, including, but not limited to injury to good will and customer relations, loss of customers sales and employees and unfair acquisition of Plaintiff's confidential information and customer lists.

24. Defendant Waldman and DYNACHEM have profited by their improper acquisition of Plaintiff's confidential information and trade secrets, including Plaintiff's customer lists, and the improper appropriation and solicitation of Plaintiff's customers, and such acts constitute unfair competition.

25. Such unfair competition has caused, is causing and will continue to cause serious, immediate and irrepairable harm to the Plaintiff in excess of TEN THOUSAND And No/100ths ($10,000.00) DOLLARS.

26. Plaintiff has no adequate remedy at law to protect itself from such unfair competition.

27. Defendant Waldman, directly and doing business as DYNACHEM, has at all times engaged in the conduct alleged in this Complaint with full knowledge and awareness that the same was causing and continuing to cause serious damage to the Plaintiff, and the conduct of the Defendant Waldman and DYNACHEM has been willful, malicious and oppressive as a result of which, Plaintiff is entitled to the sum of TWENTY FIVE THOUSAND And No/100ths ($25,000.00) DOLLARS.

WHEREFORE, Plaintiff prays that:

FIRST: Defendants Waldman and DYNACHEM during the pendency of this action, and thereafter for a period of eighteen (18) months from the date of final action or order of this Court from:

a) Soliciting or selling, or attempting to solicit or offer for sale for himself, or on behalf of any other person or entity, any disinfectants, soaps, detergents, chemical specialties, paints, water treatments, maintenance chemicals, cleaners insecticides, adhesives, glues, paper products for industry and institutions, degreasing, sanitary supply and floor maintenance materials and equipment and related products within the following area:

> The Counties of Albany, Greene, Schoharie, Rensselaer and Columbia Counties, New York State, and an area within a 90-mile radius of Loudonville, New York.

b) Directly or indirectly, for himself or any other person or entity, soliciting, diverting, taking away or attempting to take away any of the customers of USAchem or the business or patronage of such customers within the aforesaid territory;

c) From directly or indirectly engaging in or acting as a sales agent, sales manager, or a broker for the products of or advisor or consultant to any person or other entity engaged in or about to become engaged in the manufacture of the products referred to in paragraph (a) hereof within the aforesaid territory;

d) From directly or indirectly making any false representation to any customers of USAchem concerning Plaintiff, its business or its products.

SECOND: That Defendants Waldman and DYNACHEM be enjoined preliminarily during the pendency of this hearing and permanently thereafter from:

a) Utilizing in any way any customer lists, sales methods or other confidential information of Plaintiff which are or have been in the knowledge of or possession of Waldman and that any such lists or information as are in writing should be delivered by Defendant Waldman to Plaintiff;

b) From conspiring to injure Plaintiff or from unfairly competing with Plaintiff, or conspiring to compete unfairly with Plaintiff by inducing breaches of agreement by the employees of Plaintiff or their customers; or selling to or soliciting or attempting to solicit or sell to the customers of Plaintiff by use of any confidential information, including sales methods and customers lists acquired from employees or former employees of Plaintiff, or from making false statements to customers of Plaintiff, disparaging or libeling Plaintiff or its business.

THIRD: That Defendants Waldman and DYNACHEM be ordered to account to Plaintiff for damages asserted in this Complaint and that Judgment be entered for Plaintiff and against said Defendant, for all sums found to be due Plaintiff by Defendant as set forth in this Complaint with interest and costs of suit.

FOURTH: That Judgment be entered in favor of Plaintiff against Defendants for damages for all injury to Plaintiff by reason of each of the acts set forth in this Complaint, with interest as the same shall appear and costs of suit.

FIFTH: That Defendant Waldman be ordered to account to Plaintiff for all commissions or profits received by him by reason of any sales to customers in behalf of himself or DYNACHEM in the following area:

The Counties of Albany, Greene, Schoharie, Rensselaer and Columbia, New York State, and an area within a 90-mile radius of Loudonville, New York.

SIXTH: That punitive damages be imposed upon the Defendant Waldman for his conduct as herein described and alleged.

SEVENTH: That the cost of this action be assessed against Defendants.

EIGHTH: That Plaintiff be granted such other and further relief as to the Court may be deemed just and proper.

Respectfully submitted,

DeGRAFF, FOY, CONWAY &
HOLT-HARRIS

By Michael G. Breslin
Michael G. Breslin

office and P.O. Address
90 State Street
Albany, New York 12207
518-462-5301

Rev. 9-66

EXHIBIT "A" ANNEXED TO COMPLAINT

SALES REPRESENTATIVE'S AGREEMENT

THIS AGREEMENT, made and entered into this 19th day of January, 1968, between NATIONAL CHEMSEARCH CORPORATION OF NEW YORK, Inc., a Texas corporation (hereinafter referred to as "Company"), and Melvin R. Waldman (hereinafter referred to as "Representative"):

20a

WITNESSETH:

In consideration of One Dollar ($1.00) and other good and valuable considerations in hand paid by Company to Representative, the employment of Representative upon the terms and provisions herein set forth, the mutual covenants and agreements herein contained and each act done pursuant hereto by either of the parties, it is covenanted and agreed as follows:

1. Company hereby employs Representative, subject to the conditions hereinafter set forth, as a sales representative on a commission basis in the territory specified in Paragraph 4 or such other territory(ies) as Company in its discretion may from time to time assign to Representative (such territory being hereafter referred to as the "assigned territory"). The Commissions to be paid to Representative shall be in accordance with the Commission Schedule and Commission Rules and Regulations of the Company as amended by the Company from time to time. Company may periodically advance to Representative against commissions earned and commissions to be earned amounts established by the Company from time to time. If on any date the aggregate amount of the advances against commissions up to such date shall exceed the total commissions earned by the Representative up to such date, the Representative, if the Company shall make written demand, shall promptly repay the Company the amount by which such advances shall exceed such commissions. The weekly compensation to be advanced by Company to Representative shall be in accordance with Sales Representative's Compensation Agreement attached hereto and made a part hereof. The Company shall have the right to do business in the assigned territory under various trade names. The Company reserves the right to employ other Representatives to solicit and sell in the assigned territory.

2. Representative accepts said employment, and it is agreed that the duties of the Representative shall be such as are from time to time assigned to him by the president, any vice president, secretary, treasurer, sales manager, sales trainer, or office manager of Company.

3. It is expressly recognized and acknowledged by Representative that Company and its affiliated and associated Companies are engaged in the manufacture, distribution and sale of disinfectants, soaps, detergents, cleaners, insecticides, chemical specialties, paints, water treatments, maintenance chemicals, adhesives, glues, paper products for industry and institutions, degreasing and sanitary supply and floor maintenance materials and equipment and related products, in substantially all of the states in the continental limits of the United States, including the assigned territory. It is expressly recognized and acknowledged by Representative that (i) Company has developed and established a valuable and extensive trade of its products; (ii) its business connections and customers have been established and maintained at great expense and are of great value to it; (iii) that Representative desires employment by Company and by virtue of such employment Representative will become familiar and possessed of the manner, methods and secrets and confidential information pertaining to such business, including without limitation; sales volume and strategy, number and location of sales representatives, and names and lists of Company's customers and clientele; (iv) by virtue of such employment Representative will become personally acquainted with the customers and trade of Company in the assigned territory; and (v) Company will suffer great loss and damage if, during Representative's employment by Company or at any time subsequent to the termination of such employment, Representative should (a) for himself or on behalf of any other person(s), firm(s), partnership(s) or corporation(s) sell, offer for sale or solicit the sale of disinfectants, soaps, detergents, chemical specialties, paints, water treatments, maintenance chemicals, cleaners, insecticides, adhesives, glues, paper products for industry and institutions, degreasing, sanitary supply and floor maintenance materials and equipment in the assigned territory or (b) engage in or enter the employment of or act as a sales agent or broker for the products of or as an advisor or consultant to any person(s), firm(s), partnership(s), or corporation(s) engaged in or about to be engaged in the manufacture, distribution or sale of disinfectants, soaps, detergents, chemical specialties, paints, water treatments, maintenance chemicals, cleansers, insecticides, adhesives, glues, paper products for industry and institutions, degreasing, sanitary supply and floor maintenance materials and equipment business in the assigned territory. Representative further recognizes and acknowledges that (i) it will be difficult, if not impossible to compute the amount of such loss or damages, (ii) by reason of Representative's financial circumstances Representative cannot respond in damages in an action at law to compensate Company for such loss or damages, and (iii) Company, accordingly, is without adequate legal remedy in the event Representative violates any of the covenants contained in Paragraphs 4 and 5. Representative acknowledges that the covenants and conditions of this Agreement are reasonable and necessary for the protection of the Company's business.

4. Representative expressly covenants and agrees that during the term of his employment by Company and for a period of eighteen (18) months immediately following the expiration or termination of such employment for any reason including, without limitation, termination by mutual agreement, (i) he will not at any time for himself or on behalf of any other person(s), firm(s), partnership(s), or corporation(s), sell, offer for sale, or solicit the sale of disinfectants, soaps, detergents, cleaners, chemical specialties, paints, water treatments, maintenance chemicals, insecticides, adhesives, glues, paper products for industry and institutions, degreasing and sanitary supply and floor maintenance materials and equipment within the assigned territory, viz:

A. Albany, Greene and Schoharie Counties, New York.

B. Any territory(ies) which is hereafter assigned to Representative by written contractual change or designation;

C. Any territory(ies) not presently assigned to Representative, but which was assigned as part of his territory under any prior contract of employment with Company or one or more of its affiliated and associated companies;

D. Any territory(ies) to which Representative is transferred by mutual consent of the parties whether or not such agreement is evidenced in writing; 21a

E. Any territory(ies) which Company in the exercise of its discretion may assign to Representative, whether or not such assignment is evidenced in writing;

F. Any territory(ies) in which Representative sells, offers for sale, or solicits the sale of disinfectants, soaps, detergents, cleaners, chemical specialties, paints, water treatments, maintenance chemicals, insecticides, adhesives, glues, paper products for industry and institutions, degreasing and sanitary supply and floor maintenance materials and equipment for Company or one or more of its affiliated and associated companies;

(ii) he will not in any way, directly or indirectly, for himself or on behalf of or in conjunction with any other person(s), partnership(s), firm(s), or corporation(s), solicit, divert, take away or attempt to take away any of the Company's customers or the business or patronage of any such customers located within said assigned territory; and (iii) he will not in any way, directly or indirectly, for himself or on behalf of or in conjunction with any person(s), partnership(s), firm(s) or corporation(s), solicit, entice, hire, employ or endeavor to employ any of the Company's employees. Representative further covenants and agrees that he will not within said period of time, directly or indirectly, engage in or enter the employment of or act as a sales agent or broker for the products of or as an advisor or consultant to any person(s), firm(s), partnership(s) or corporation(s) engaged in or about to become engaged in the manufacture, distribution or sale of disinfectants, soaps, detergents, cleaners, insecticides, chemical specialties, paints, water treatments, maintenance chemicals, adhesives, glues, paper products for industry and institutions, degreasing and sanitary supply and floor maintenance materials and equipment within the assigned territory. During the term of Representative's employment by Company or any of its subsidiaries, affiliates, successors or associated companies, Representative further agrees not to sell, offer for sale or solicit the sale of disinfectants, soaps, detergents, cleaners, insecticides, chemical specialties, paints, water treatments, maintenance chemicals, adhesives, glues, paper products for industry and institutions, degreasing and sanitary supply and floor maintenance materials and equipment and any other products of Company in any other territory or area except as provided in this paragraph or any additions or amendments thereto. Representative further expressly covenants and agrees that during the term of his employment by Company and for a period of eighteen (18) months immediately following the expiration or termination of such employment with or without cause, including without limitation, termination by mutual agreement, that he will not at any time for himself or on behalf of any other Sales Representative or former Sales Representative of Company or any of its subsidiaries, affiliates, successors or associated companies, sell, offer for sale or solicit the sale of disinfectants, soaps, detergents, cleaners, insecticides, chemical specialties, paints, water treatments, maintenance chemicals, adhesives, glues, paper products for industry and institutions, degreasing and sanitary supply and floor maintenance materials and equipment and any other products of Company within the assigned or former assigned territory of such other Representative(s). In the event of violation by Representative of any one or more of the covenants contained in this paragraph, it is agreed that the term of each such covenant so violated shall be automatically extended for a period of eighteen (18) months from the date on which Representative permanently ceases such violation or for a period of eighteen (18) months from the date of the entry by a court of competent jurisdiction of a final order or judgment enforcing such covenant(s), whichever period is later.

5. Each restrictive covenant hereinabove set forth in Paragraph 4 is separate and distinct of every other restrictive covenant set forth in said paragraph and in the event of the invalidity of any such covenant the remaining obligations shall be deemed independent and divisible. The parties agree that the inclusion of all the territories hereinabove set forth in Paragraph 4 is reasonable and necessary for the protection of Company. If, however, the inclusion of all said territories shall be deemed too extensive and therefore unreasonable, such lettered paragraph under Paragraph 4 above shall be deemed as separate and divisible, and to the extent necessary to make the territory reasonable, shall be eliminated in the reverse order from which each is stated.

6. Representative shall not at any time, either during his employment or after the termination of such employment, divulge to others or use for his own benefit any confidential information obtained during the course of his employment by Company relating to sales, formulae, processes, methods, machines, manufactures, compositions, ideas, improvements or invention belonging to or relating to the affairs of Company, its subsidiaries, affiliates, successors or associated companies.

7. It is agreed that if Representative's employment by Company is terminated for any reason, no commissions shall be due or payable to Representative on orders secured by him but not shipped as of the effective date of such termination.

8. Representative agrees during the term of said employment that he will devote his entire time and attention exclusively to the business and interests of the Company and that he will perform to the entire satisfaction of the Company, such duties as may be assigned to him and that he will do his utmost to further enhance and develop the business interests and welfare of the Company.

9. This agreement shall be effective upon execution and may be terminated at any time by either party without notice.

10. In connection with Representative's performance of his duties and obligations in the assigned territory, Company is furnishing Representative with sales catalogs, brochures, samples, sample cases, machinery, equipment and other sales aids and will from time to time during Representative's employment furnish additional sales aids. It is understood and agreed that all such property so furnished Representative is and will remain the property of Company. Representative recognizes and agrees that said sales aids and other property furnished him have been carefully developed by Company over long periods of time at great cost and expense; that because of Company's great expenditures for research and development and for exclusive merchandising tools and methods, great loss and damage will result to Company if said sales aids or other property should fall into the hands of unauthorized persons; that failure to return same in the event of the termination of his employment will cause great loss and damage to the Company; that such loss and damage is difficult, if not impossible to compute. Accordingly, in the event Representative's employment is terminated for any reason, or no reason, Represen- 18

tative agrees to return all such property to Company at its main office, freight collect, and that in the event he fails or refuses for any reason, or no reason, to so return said sales aids and other property to Company, as herein agreed to he will pay to Company at its principal office the sum of $500.00 as liquidated damages and not as a penalty for breach of terms and provisions of this Paragraph.

11. Regardless of the place of execution or the order in which the signatures of the parties shall be affixed hereto or the place of performance, this agreement shall be interpreted in accordance with the laws of the STATE OF TEXAS.

12. The provisions of this contract shall be fully applicable whether Representative is employed by Company, or by any of its subsidiaries, affiliates, successors or associated companies, it being understood and agreed that this Agreement may be assigned without notice at any time and from time to time by Company to or by any of its subsidiaries, affiliates, successors or associated companies. In the event of such an assignment, any such Company to which the Agreement is assigned shall automatically be substituted for the Company executing this Agreement for all intents and purposes and to the same extent as if such assignee were the Company executing this Agreement.

IN WITNESS WHEREOF, Representative has herewith affixed his hand and seal and Company has caused this Agreement to be executed by a duly authorized officer, all the day and year first above mentioned.

NATIONAL CHEMSEARCH CORPORATION OF NEW YORK, Inc.

By _____
COMPANY

_____ (Seal)
REPRESENTATIVE

22a-1

SALES REPRESENTATIVE'S COMPENSATION AGREEMENT

THIS AGREEMENT, made and entered into this 19th day of January, 1968, between NATIONAL CHEMSEARCH CORPORATION OF NEW YORK, Inc., a Texas corporation, (hereinafter referred to as "Company"), and Melvin R. Waldman (hereinafter referred to as "Representative"):

WITNESSETH:

In consideration of the sum of One Dollar ($1.00) and other good and valuable considerations in hand paid by Company to Representative, the employment of Representative upon the terms and provisions set forth in Sales Representative's Agreement of even date to which this is attached and made a part, mutual covenants and agreements herein contained and each act pursuant hereto by either of the parties, it is covenanted and agreed as follows:

1. By Sales Representative's Agreement to which this is attached and made a part, Company has contemporaneously herewith employed Representative, subject to the conditions set forth in said Sales Representative's Agreement, as a sales representative on a commission basis.

2. Company may weekly advance to Representative against commissions earned and to be earned amounts established by the Company from time to time. Until further notice by Company to Representative, Company shall advance to Representative weekly against commissions earned and to be earned the following amounts:

A. $ 150.00 per week as salary less applicable Federal withholding tax and Social Security thereon; and

B. $ 50.00 per week as traveling expense allowance.

3. The Sales Representative's Agreement between Company and Representative of even date herewith and this Sales Representative's Compensation Agreement between Company and Representative constitutes the entire agreement and understanding between Company and Representative. All representations, understandings, stipulations agreements or promises not set forth in said agreements, shall be null and void and of no further force or effect whatsoever.

IN WITNESS WHEREOF, Representative has herewith affixed his hand and seal and Company has caused this Agreement to be executed by a duly authorized officer, all the day and year first above mentioned.

NATIONAL CHEMSEARCH CORPORATION OF NEW YORK, Inc.

By _____
COMPANY

_____ (Seal)
REPRESENTATIVE

cc: Staggs, Cleveland, Ridlen, File

EXHIBIT "B" ANNEXED TO COMPLAINT

401 Hackensack Ave., Hackensack, N. J. 07601

May 22, 1972

Mr. Melvin R. Waldman
11 Vatrano Lane
Loudonville, N. Y. 12211

Re: Amendment to Sales Representative's Agreement between us dated January 19, 1968

Dear Mel:

Your Sales Representative's Agreement is hereby amended by the addition of the following territory as your "Assigned Territory."

Rensselaer and Columbia Counties in the State of New York

This Amendment shall be effective for all purposes as of May 22, 1972.

Please signify your approval of this Amendment by signing the original and the first and second copies of this letter in the space provided below for this purpose and thereafter attach one of the carbon copies so signed by you to your original Sales Representative's Agreement and return the original and one carbon copy so signed by you marked for my personal attention.

Sincerely yours,

NATIONAL CHEMSEARCH CORPORATION OF NEW YORK, INC.

By:_____
Norman Steinman, Division Manager

ACCEPTED AND AGREED TO:

This _____day of _____, 1972

_____
Melvin R. Waldman

EXHIBIT "C" ANNEXED TO COMPLAINT

DISTRICT SALES MANAGER'S AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of February, 1970, between NATIONAL CHEMSEARCH CORPORATION OF NEW YORK, INC., a Texas corporation, hereinafter referred to as "Company", and MELVIN R. WALDMAN hereinafter referred to as "District Sales Manager".

WITNESSETH:

In consideration of the sum of One Dollar ($1.00) and other good and valuable considerations in hand paid by Company to District Sales Manager, the employment or the continued employment of District Sales Manager upon the terms and provisions herein set forth, the mutual covenants and agreements herein contained, and each act done pursuant hereto by either of the parties, it is covenanted and agreed as follows:

1. Company hereby employs or continues to employ District Sales Manager, subject to the conditions hereinafter set forth, as District Sales Manager at a ~~weekly~~ salary of Two Hundred Dollars ($ 200.00) or such other ~~weekly~~ salary or other compensation as the parties may from time to time hereafter agree upon. The District Sales Manager shall render the services and perform the duties hereinafter outlined for the Company at and out of Loudonville, New York and for Company and its affiliated and associated companies at such other places or in such other areas or territories as the Company or its affiliated and associated companies shall from time to time direct.

2. District Sales Manager accepts said employment or continued employment, and it is agreed that the duties of the District Sales Manager

shall be to offer for sale, solicit, attempt to sell and sell Company's products in the county of Albany, New York.

(hereinafter referred to as "assigned territory") and such other territory(ies) assigned to District Sales Manager, and to train, assist and supervise salesmen of the Co pany at and out of Loudonville, New York and salesmen of the Company and its affiliated and associated companies in such other areas or territories as the Company and its affiliated and associated companies shall from time to time direct and to perform such other duties as are from time to time assigned him by the President, any Vice President, Secretary and Treasurer of the Company and its affiliated and associated companies.

3. It is expressly recognized and acknowledged by District Sales Manager that the Company and its affiliated and associated companies are engaged in the manufacture, distribution and sale of disinfectants, soaps, detergents, cleaners, insecticides, chemical specialties, paints, water treatments, maintenance chemicals, chemicals for the control of water pollution, and chemicals for the improvement of turf, lawn and grounds, adhesives, glues, degreasing and sanitary supply and floor maintenance materials and equipment (hereinafter referred to as "Company's Products") in all of the States in the United States. It is expressly recognized and acknowledged by District Sales Manager that (i) Company has developed and established a valuable and extensive trade of its products; (ii) its business connections and customers have been established and maintained

at great expense and are of great value to it; (iii) that District Sales Manager desires employment or continued employment by Company, and by virtue of such employment or continued employment, District Sales Manager will become familiar and possessed of the manner, methods and secret and confidential information pertaining to such business, including without limitation, sales publications, sales manuals, sales volume and strategy, number and location of Sales Managers and salesmen, and names and addresses of Company's customers and clientele; (iv) by virtue of such employment or continued employment, District Sales Manager will become personally acquainted with the customers and trade of Company and its affiliated and associated companies in all areas where he will perform his duties; (v) Company will suffer great loss and damage if, during District Sales Manager's employment or continued employment by Company or at time subsequent to the termination of such employment, District Sales Manager should (a) for himself or on behalf of any other person(s), firm(s), partnership(s) or corporation(s), sell, offer for sale or solicit the sale of products similar to Company's Products, and perform services similar to services he shall render for the Company in the areas where he will perform his duties or (b) engage in or enter the employment of or act as a sales agent or broker for the products of or as an advisor or consultant to any person(s), firm(s), partnership(s), or corporation(s) engaged in or about to be engaged in the manufacture, distribution or sale of products similar to Company's Products business in all areas where he will perform his duties. District Sales Manager further recognizes and acknowledges that (i) it will be difficult, if not impossible, to compute the amount of such loss or damages, (ii) by reason of District Sales Manager's financial circumstances, District Sales Manager cannot respond in damages in action at law to compensate Company for such loss or damages, and (iii) Company, accordingly, is without adequate legal remedy in the

event District Sales Manager violates any of the covenants contained in Paragraphs 4 and 6. District Sales Manager acknowledges that the covenants and conditions of this Agreement are reasonable and necessary for the protection of the Company's business.

4. District Sales Manager expressly covenants and agrees that during the term of his employment or continued employment by Company and for a period of eighteen (18) months immediately following the expiration or termination of such employment for any reason or reasons (i) he will not at any time for himself or on behalf of any other person(s), firm(s), partnership(s), or corporation(s), sell, offer for sale, or solicit the sale of products similar to Company's Products (a) in or within a ninety (90) mile radius of the city of Loudonville, New York

and/or (b) in or within any County (or Parish) or other place in the United States in which District Sales Manager shall have performed duties for Company and its affiliated and associated companies under and by virtue of his employment or continued employment, and/or (c) in any city, town, borough, township, village or other place in the United States in which the Company then has an office, warehouse or place of business; (ii) he will not in any way, directly or indirectly, for himself or on behalf of, or in conjunction with, any other person(s), partnership(s), firm(s), or corporation(s), solicit, divert, take away, or attempt to take away, or attempt to take away, any of the Company's customers, or the business or patronage of any such customers, located (a) in or within a ninety (90) mile radius of the city of Loudonville, New York

and/or (b) in or within any County (or Parish) or other place in the United States in which the District Sales Manager shall have performed duties or rendered services for Company and its affiliated and associated companies under and by virtue of his employment, and/or (c) in any city, town, borough, township, village or other place in the United States in which the Company then has an office, warehouse or place of business (iii) he will not at any time for himself or on behalf of any other person(s), firm(s), partnership(s) or corporation(s), train, act as sales trainer, assist and supervise salesmen or perform similar services as those performed for the Company, including but not limited to, interviewing and hiring salesmen and other personnel, (a) in or within a ninety (90) mile radius of the city of Loudonville, New York

and/or (b) in and within any County (or Parish) or other place in the United States in which the District Sales Manager shall have performed duties for Company and its affiliated and associated companies under and by virtue of his employment, and/or (c) in any city, town, borough, township, village or other place in the United States in which the Company then has an office, warehouse or place of business. District Sales Manager further covenants and agrees that he will not within said period of time, directly or indirectly, engage in or enter the employment of or act as a sales agent or broker for the products of or as an advisor or consultant to any person(s), firm(s), partnership(s) or corporation(s) engaged in or about to become engaged in the manufacture, distribution or sale of products similar to Company's Products, (a) in or within a ninety (90) mile radius of the city of Loudonville, New York

and/or (b) in and within any County (or Parish) or other place in the United States in which the District Sales Manager shall have performed duties for Company and its affiliated and associated companies under and by virtue of his employment or continued employment, and/or (c) in any city, town, borough, township, village or other place in the United States in which the Company then has an office, warehouse or place of business.

District Sales Manager further expressly covenants and agrees that during the term of his employment by Company and for a period of eighteen (18) months immediately following the expiration or termination of such employment with or without cause, including without limitation, termination by mutual agreement, that he will not at any time for himself or on behalf of any other District Sales Manager, former District Sales Manager, Sales Representative or former Sales Representative of Company or any other employee or former employee of Company or any of its subsidiaries, affiliates, successor associated companies, sell, offer for sale or solicit the sale of products similar to Company's Products, in any area or place where such District Sales Manager or former District Sales Manager, Sales Representative, former Sales Representative or other former employee of Company has performed duties for Company and its affiliated and associated companies or within the assigned or former assigned territory of such other Representative or former Representative of Company or its associated or affiliated companies. District Sales Manager further covenants and agrees that he will not for a period of eighteen (18) months immediately following the expiration or termination of such employment, in any way, directly or indirectly, for himself or on behalf of or in conjunction with any other person(s), partnership(s),

firm(s) or corporation(s), solicit, entice, hire, employ or endeavor to employ any of the Company's and its affiliated and associated companies' employees located (a) in or within a ninety (90) mile radius of the city of Loudonville, New York 30a

and/or (b) in and within any County (or Parish) or other place in the United States in which the District Sales Manager shall have performed duties for Company and its affiliated and associated companies under and by virtue of his employment or continued employment, and/or (c) in any city, town, borough, township, village, or other place in the United States in which the Company then has an office, warehouse or place of business. In the event of the violation by District Sales Manager of any one or more of the covenants contained in this paragraph, it is agreed that the terms of each such covenant so violated shall be automatically extended for a period of eighteen (18) months from the date on which District Sales Manager permanently ceases such violation or for a period of eighteen (18) months from the date of the entry by a court of competent jurisdiction of a final order or judgment enforcing such covenant(s), whichever period is later.

5. Each restrictive covenant hereinabove set forth in Paragraph 4 is separate and distinct of every other restrictive covenant set forth in said paragraph and in the event of the invalidity of any such covenant the remaining obligations shall be deemed independent and divisible. The parties agree that the inclusion of all of the territories hereinabove set forth is reasonable and necessary for the protection of Company. If, however, the inclusion of all of said territories shall be deemed too extensive and therefore unreasonable, each of the territories specified under (a), (b) and (c) of Paragraph 4 shall be deemed as separate and divisible, and to the extent necessary to make the territory reasonable, shall be eliminated in the inverse order from which each is stated.

6. A. District Sales Manager shall not at any time, either during his employment or his continued employment or after the termination of such employment, divulge to others or use for his own benefit any confidential information obtained during the course of his employment by Company relating to sales, sales publications, sales manuals, formulae, processes, methods, machines, manufactures, compositions, ideas, improvements and inventions belonging to or relating to the affairs of Company, its subdivisions, affiliates, successors or associated companies. 31a

6. B. District Sales Manager further expressly covenants and agrees that during the term of his employment and at all times thereafter, he shall not divulge to others or use to his own benefit any trade secrets belonging to the Company and its subsidiaries, affiliates, successors or associated companies obtained during the course of his employment or that he became aware of in consequence of his employment.

7. District Sales Manager agrees during the term of his employment or continued employment that he will devote his entire time and attention exclusively to the business and interests of the Company and that he will perform to the entire satisfaction of the Company, such duties as may be assigned to him and that he will do his utmost to further enhance and develop the business interests and welfare of the Company.

8. This Agreement shall be effective upon execution and may be terminated at any time by either party without notice.

9. If any question arises as to the validity, construction, interpretation, or performance of this District Sales Manager's Agreement in any Court of the United States of America, or any state thereunder, or foreign country, it is agreed that the laws of the State of Texas shall govern without reference as to the place of execution, delivery or performance of same.

10. The provisions of this contract shall be fully applicable whether District Sales Manager is employed by Company, or by any of its subsidiaries, affiliates, successors or associated companies, it being understood and agreed that this Agreement may be assigned without notice at any time and from time to time by Company to or by any of its subsidiaries, affiliates, successors or associated companies. In the event of such an assignment, any such Company to which the Agreement is assigned shall automatically be substituted for the Company executing this Agreement for all intents and purposes and to the same extent as if such assignee were the Company executing this Agreement.

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11. It is understood and agreed that in the event any paragraph, provision or clause of this Agreement, or any combination of the same, shall be found or held to be contrary to or unenforceable at law or in equity, or under any presently existing or hereinafter enacted legislation, regulation or order of the United States, or any agency or sub-division thereof, or of any state or sub-division thereof, or any municipality, such finding or holding shall not in any way affect the other paragraphs, provisions and clauses in this Agreement, which shall, notwithstanding, continue in full force and effect, it being the express intention of the parties hereto that a holding or a finding that any paragraph, provision or clause of this Agreement, or any combination thereof, is contrary to, or unenforceable at law or in equity, or under any such legislation, regulation or order, shall not in any way affect the other provisions, paragraphs and clauses of this Agreement which shall nonetheless remain in full force and effect.

12. District Sales Manager has heretofore been employed by Company or one of its affiliated or associated companies as a Sales Representative. It is understood and agreed that the

covenants and agreements contained in Paragraph 4 of said Sales Representative's Agreement and any amendments thereto, if any, shall be and remain in full force and binding effect, and District Sales Manager acknowledges that such provisions are reasonable and necessary for the protection of Company's business. It is further understood and agreed that said covenants and agreements contained in said Paragraph 4 of said Sales Representative's Agreement and amendments thereto, or other employment agreement, if any, shall be in addition to the covenants set forth in this District Sales Manager's Agreement.

IN WITNESS WHEREOF, District Sales Manager has herewith affixed his hand and seal and Company has caused this Agreement to be executed by a duly authorized officer, all the day and year first above mentioned.

NATIONAL CHEMSEARCH CORPORATION OF NEW YORK, INC.

By Harold Kimmel
HAL I. KIMMEL
VICE PRESIDENT

"COMPANY"

Melvin R. Waldman
MELVIN R. WALDMAN

"DISTRICT SALES MANAGER"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, Inc., a Texas Corporation,

Plaintiff,

-against-

Civil Action
No. 75-CV-170

MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM,

ANSWER

Defendants.

Defendant, MELVIN R. WALDMAN, individually and d/b/a Dynachem, by his attorneys O'Connell and Aronowitz, P.C. as his Answer to Plaintiff's Complaint alleges:

AS TO THE FIRST CLAIM FOR RELIEF:

1. Denies each and every allegation contained in paragraphs "8", "11", "12", "15", "18", "19", "20", and "21" of the Complaint.

2. Denies having sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs "1" and "4" of the Complaint.

3. Respectfully refers to the Court's attention the said contracts referred to in paragraphs "13" and "14" of the said Complaint for the interpretation and meaning of their respective terms, conditions and provisions.

4. Admits the allegations contained in paragraphs "2" and "10" of the said Complaint.

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5. With respect to paragraph "3" of the said Complaint respectfully refer to the Court's attention the said Complaint with respect to its allegations as to jurisdiction and claims; however, denies having sufficient knowledge or information to form a belief as to whether that matter in controversy exceeds the sum of Ten Thousand and 00/100 ($10,000.00) Dollars, exclusive of interest and costs.

6. As to paragraph "5" of the said Complaint, admits the allegations contained in the first sentence thereof and denies having sufficient knowledge or information to form a belief as to the truth of the allegations contained in the second and last sentence thereof.

7. With regard to paragraph "6" of the said Complaint, denies having sufficient knowledge or information to form a belief as to the truth of the allegations contained in the first sentence thereof and denies the allegations contained in the second and last sentence thereof.

8. With respect to paragraphs "7" and "9" of the said Complaint, Defendant admits executing the documents respectively set forth as Exhibits "A" and "C"; however, respectfully refers to the Court's attention the respective documents as to the intention and meaning of the terms, conditions and provisions of each.

9. With respect to paragraph "16" of the Complaint,

admits that he organized a company called Dynachem, and admits that doing business as Dynachem he solicited and sold products some of which were similar to products he sold for Plaintiff, and admits that some of said sales were made within the area described in what purports to be the Amended Sales Representative's Agreement and the District Sales Manager's Agreement, and denies the remaining allegations of the said paragraph.

10. With respect to paragraph "17" of the said Complaint, Defendant admits that subsequent to terminating his employment with the Plaintiff, Defendant Waldman individually and doing business as Dynachem, solicited and sold orders to customers, some, but not all of which had been customers and that solicitation and sales in many, but not all cases, were of products of the type set forth in paragraph "5" of the Complaint; that Defendant Waldman performed services similar to those he performed for Plaintiff and acted as a sales agent for Dynachem; however, denies each and every of the remaining allegations contained in the said paragraph.

AS TO THE SECOND CLAIM FOR RELIEF:

11. Defendant repeats and realleges with the same force and effect as if fully set forth herein, each and every allegation contained in paragraphs "1" through "10" inclusive of this Answer.

12. Denies each and every allegation contained in paragraphs "23", "24", "25", "26" and "27" of the said Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

13. The said agreements of employment as Plaintiff's Sales Representative and District Sales Manager are contracts of adhesion and are unreasonably oppressive, unconscionable, inequitable and contrary to public policy with respect to Defendant Waldman, and thereby invalid and unenforceble by Plaintiff.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

14. Upon information and belief, on the occasion of Defendant Waldman's entering into the agreement of employment with Plaintiff as Sale Representative and District Sales Manager, Plaintiff exercised undue influence upon Defendant Waldman; thereby coercing Defendant Waldman into executing the agreements, the terms, conditions, and provisions of which he was not fully cognizant of, and had he had knowledge of said terms, conditions, and provisions thereof, and understood their legal impact, he would not have executed said agreements.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE AND COUNTERCLAIM:

15. Upon information and belief, Plaintiff, its officers, employees, agents, and/or servants (hereinafter collectively referred to as Plaintiff) represented to Defendant

Waldman prior to his becoming an employee of Plaintiff that Defendant would receive a commission from twenty-eight (28) to thirty (30) percent on all sales made by him of Plaintiff's products.

16. Upon information and belief, Plaintiff represented to Defendant Waldman prior to his becoming an employee of Plaintiff that Plaintiff would "protect" Defendant's assigned area and customer accounts, guarantying that no other of Plaintiff's employees would solicit or sell in the said area or to Defendant Waldman's customer accounts.

17. Upon information and belief, Plaintiff represented to Defendant Waldman prior to his becoming an employee of Plaintiff that the prices of Plaintiff's said products were and would remain competitive with similar products of other manufacturers being sold in Plaintiff's assigned area.

18. Defendant, Waldman, advised Plaintiff prior to becoming an employee of Plaintiff that he desired a management position, rather than a sales position.

19. Upon information and belief, Plaintiff represented to Defendant Waldman that Plaintiff would advance Defendant Waldman to a position of Manager when he had gained experience in sales.

20. Said representations were material and were made in order to induce Defendant Waldman to enter into an agreement

of employment with Plaintiff, and were made with knowledge that had they not been made, Defendant Waldman would not have entered in a contract of employment with Plaintiff.

21. Subsequent to Defendant Waldman's becoming an employee of Plaintiff, Plaintiff agreed to pay fifty (50) percent of the freight charged on sales to municipal customers.

22. Upon entering the agreement dated February 1, 1970, which purports to be a District Sales Manager's Agreement, Plaintiff agreed to pay Defendant Waldman a two (2) percent commission on sales made by all Plaintiff's sales representatives who Defendant Waldman might "train".

23. During the course of Defendant Waldman's employment, Plaintiff failed to fulfill said representatives or after having honoring them for a time thereafter, withdrew them in that (a) Plaintiff required Defendant Waldman to accept a smaller commission on sales of certain items; (b) upon information and belief, Plaintiff permitted other sales representatives to solicit and sell to Defendant Waldman's accounts, made certain accounts house accounts, and permitted Certified Laboratories, which is a division of Plaintiff, USAchem, Inc., to solicit and sell Defendant Waldman's accounts with products of the kind set forth in paragraph "5" of the Complaint, which were sold by Defendant Waldman on Plaintiff's behalf; (c) the prices of Plaintiff's product are much higher than those

of its competitors, and during 1974, Plaintiff increased the prices on most of its products by almost fifty (50) percent, with the result that many of Defendant Waldman's accounts refused to order Plaintiff's products; (d) Plaintiff continuously ignored and put off Defendant Waldman's inquiries and requests for a management promotion until February 1, 1970, when Plaintiff promoted Defendant Waldman to "District Sales Manager", which proved to be no more than a glorified sales representative position, and not management oriented; (e) Plaintiff discontinued its fifty (50) percent freight allowance; (f) Plaintiff discontinued the two (2) percent commission which it had been paying Defendant Waldman pursuant to the February 1, 1970, agreement and subsequently terminated Defendant Waldman as "District Sales Manager".

24. As a result of the foregoing breaches by Plaintiff, Defendant Waldman is relieved from performance of any and all obligations and duties he might have had under either or both of the said employment contracts.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM:

25. Defendant Waldman repeats and realleges each and every allegation contained in Paragraphs "15" through "23" of this Answer as if fully set forth herein.

26. As a result of the foregoing conduct, Plaintiff has made performance by Defendant Waldman impossible, thereby relieving Defendant Waldman of any and all obligations and duties he might have had under either or both of the said employment contracts.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM:

27. Repeat and reallege paragraphs "15" through "20" and paragraph "23".

28. Upon information and belief, at the time that the said representations were made Plaintiff knew or should reasonably have known the said representations were false and/or that the said representations were made with reckless disregard for their truth or falsity.

29. Had the foregoing representations not been made, Defendant Waldman would not have entered into a contract of employment with Plaintiff.

30. As a result of the false and fraudulent representations, as aforesaid, Defendant Waldman exerted considerable time, money and energy on behalf of Plaintiff, as a result of which Plaintiff has unjustly and greatly benefited, which time, money and effort and benefit was lost to Plaintiff.

31. As a result thereof, Plaintiff has been damaged in the amount of Seven Hundred Thousand and 00/100 ($700,000.00)

Dollars, and the conduct of the Plaintiff being willful, malicious and oppressive, Defendant Waldman is entitled to One Million and 00/100 ($1,000,000.00) Dollars as punitive damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM:

32. Defendant Waldman repeats and realleges with the same force and effect as if fully set forth herein, each and every allegation contained in paragraphs "15" through "19" herein.

33. Said representations were intended to be and were material conditions of the said agreement of employment entered into between Plaintiff and Defendant Waldman.

34. During the course of Defendant's employment and prior to February 3, 1975, Plaintiff breached the said contract of employment by failing to fulfill and carry out the said conditions as more fully described in paragraph "23" herein.

35. As a result of the foregoing Defendant Waldman has been damaged in the amount of Seven Thousand and 00/100 ($700,000.00) Dollars.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM:

36. Defendant Waldman repeats and realleges each and every allegation contained in paragraphs "15" through "22"

herein with the same force and effect as if fully set forth herein.

37. Said representations were material and were made in order to induce Defendant Waldman to enter into an agreement of employment as Plaintiff's District Sales Manager, and were made with knowledge that had they not been made, Defendant Waldman would not have entered into the said District Sales Manager's Agreement.

38. Upon information and belief, at the time said representations were made the Plaintiff knew or should have reasonably known they were false, and/or said representations were made with reckless disregard for their truth and falsity.

39. Had the foregoing representations not been made Defendant Waldman would not have entered into the contract of employment as Plaintiff's District Sales Manager.

40. As a result of the false and fraudulent representations as aforesaid, Defendant Waldman exerted considerable time, money and energy on behalf of Plaintiff as a result of which Plaintiff has been unjustly and greatly benefited, which time, money and effort and benefit were lost to Plaintiff.

41. By reason thereof, Defendant Waldman has been damaged in the amount of Seven Hundred Thousand and 00/100 ($700,000.00) Dollars, and Plaintiff's conduct being willful, malicious, and oppressive, Defendant Waldman is entitled to punitive

damages in the amount of One Million and 00/100 ($1,000,000.00) Dollars.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM:

42. Defendant Waldman repeats and realleges each and every allegation contained in paragraphs "15" through "22" herein with the same force and effect as if fully set forth herein.

43. Said representations were intended to be material conditions of the said agreement of employment as Plaintiff's District Sale Manager.

44. During the course of Defendant Waldman's employment as District Sales Manager and prior to February 3, 1975, Plaintiff breached Defendant Waldman's said agreement of employment as Plaintiff's District Sales Manager in that Plaintiff failed to satisfy and carry out the said conditions as more fully set forth in paragraph "23" herein.

45. As a result of the foregoing, Defendant Waldman has been damaged in the amount of Seven Hundred Thousand and 00/100 ($700,000.00) Dollars.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM:

46. On or about February 1, 1970, Plaintiff and Defendant Waldman entered into an agreement entitled District Sales

Manager's Agreement a copy of which is attached to Plaintiff's Complaint as Exhibit "C".

47. Pursuant to paragraph "1" of the said agreement the Plaintiff agreed to employ Defendant Waldman as District Sales Manager at a weekly salary of Two Hundred and 00/100 ($200.00) Dollars, and in return Defendant Waldman agreed to perform certain duties and services for the Plaintiff.

48. Since February 1, 1970, and through February 3, 1975, Plaintiff has failed to make any payment to Defendant, Waldman of the said weekly salary in breach of the said District Sales Manager's Agreement, althought Defendant Waldman has fully performed pursuant to the said Agreement.

49. By reason thereof, Defendant has suffered damages in the amount of Fifty-two Thousand Two Hundred and 00/100 ($52,200.00) Dollars together with interest computed from the date each respective payment was due.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM:

50. Upon information and belief, Plaintiff established a profit sharing plan for its employees.

51. Upon information and belief, Defendant Waldman was a participant in the said profit sharing plan.

52. Upon information and belief, Defendant Waldman is

entitled to a vested share of the said plan in an amount which as yet is undetermined, for which Plaintiff has not accounted to Defendant Waldman.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM:

53. Defendant Waldman repeats and realleges each and every allegation contained in paragraphs "50" and "51" of this Answer as if fully set forth herein.

54. Defendant Waldman has personally contributed One Thousand Eight Hundred and 00/100 ($1,800.00) Dollars into the said profit sharing plan in his own account.

55. Defendant Waldman is entitled to the return of the said One Thousand Eight Hundred and 00/100 ($1,800.00) Dollars together with interest thereon from the date of contribution.

56. Plaintiff has failed to return the same to Defendant.

57. As a result of the foregoing, Defendant Waldman has been damaged in the amount of One Thousand Eight Hundred ($1,800.00) Dollars together with interest thereon from the date the said money was contributed into the profit sharing plan.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM:

58. Upon information and belief, during the period of time that Defendant Waldman was in the Plaintiff's employ, Plaintiff had deducted from Defendant Waldman's commissions amounts representing commissions due on delinquent accounts.

59. Upon information and belief, Plaintiff has received payments on said delinquent accounts and will continue to receive such payments in the future in amounts as yet unknown to Defendant Waldman.

60. Defendant Waldman is entitled to his portion of the commission earned as a result of said payments.

61. Plaintiff has not tendered to Defendant Waldman any commissions earned as a result of such payments, and Defendant Waldman has no means of determining if and when said payments are due him without a periodic accounting thereof by Plaintiff.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM:

62. Defendant Waldman is entitled to commissions on all sales made prior to the date of termination of employment with Plaintiff.

63. Plaintiff has not accounted to Defendant Waldman since the date of his termination of employment with regard to commissions due on such sales, nor is Defendant Waldman

able to determine the amount of any such commissions due him unless the Plaintiff periodically accounts to Defendant Waldman.

WHEREFORE, Defendant Waldman demands judgment:

First: That the Contracts of employment entered into between Plaintiff and Defendant Waldman or such portions of them as restrict Defendant's right to continue in all respects in his present business be decreed null and void and/or rescinded:

Second: That Plaintiff be ordered to account to Defendant Waldman for the damages asserted in this Answer and a Judgment be entered for Defendant Waldman against Plaintiff for all sums found to be due Defendant Waldman by Plaintiff as set forth in this Answer together with interest and the costs of suit;

Third: That Defendant Waldman be awarded damages against the Plaintiff for all injuries to Defendant Waldman by reason of each of the acts set forth in this Answer, together with interest as the same shall appear and the costs of suit;

Fourth: That punitive damages be imposed upon Plaintiff and for its conduct as herein described and alleged;

Fifth: On behalf of Defendants herein against the Plaintiff dismissing Plaintiff's Complaint;

Sixth: That the costs of this action be assessed against Plaintiff, together with reasonable attorney's fees;

Seventh: That Defendants be granted such other and further relief as to this Court may seem just and proper.

Respectfully submitted,

O'Connell and Aronowitz, P.C.

By: _____
Neil H. Rivchin
Attorneys for Defendants
Office and P. O. Address
100 State Street
Albany, New York 12207

(518) 462-5601

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

ALBANY DIVISION

USAchem, INC., A Texas Corporation,

Plaintiff,

-against-

CIVIL ACTION
NO. 75-CV-170

MELVIN R. WALDMAN and MELVIN R. WALDMAN, d/b/a DYNACHEM,

REPLY TO COUNTERCLAIM

Defendants.

Plaintiff, for a reply to the counterclaims set forth in the defendants' Answer, alleges:

AS TO THIRD COUNTERCLAIM

1. Plaintiff, USAchem, Inc., denies the allegations contained in paragraph 15 of the Answer and states that defendant Waldman was given a detailed commission list as to each product at the time of his employment.

2. Plaintiff denies the allegations contained in paragraphs 16, 17, 19, 20 and 24 of the Answer.

3. Plaintiff admits that defendant Waldman indicated an interest in working up to a management position but denies the remaining allegations contained in paragraph 18 of the Answer.

4. Plaintiff admits that such an arrangement existed as to some three to five municipal accounts but was discontinued and denies the remainder of the allegations contained in paragraph 21 of the Answer.

5. Plaintiff admits that pursuant to his duties as a District Sales Manager, defendant Waldman was paid two (2%) percent commission on sales made by plaintiff's sales representatives who were being trained and managed by defendant Waldman during the time he was performing such services and who remained with plaintiff beyond nine to twelve months.

6. Plaintiff denies that it made any representations not included in the written agreements between the parties and further denies any alleged failure to fulfill any representation. Plaintiff denies that defendant Waldman was ever paid commissions on sales of products at any rate other than is contained on its published commission list distributed to its sales representatives. Plaintiff denies that it permitted other sales representatives to solicit and sell to defendant Waldman's account or that it ever made certain house accounts and would further show that Certified Laboratories already had sales representatives selling in the same area as Waldman prior to Waldman becoming employed by plaintiff and plaintiff specifically reserved the right in

its contractual agreement with defendant Waldman to so market its products. Plaintiff is without information sufficient to form a belief as to the prices of its competitor's products but does admit, and from time to time, it has increased the price of its products in line with its increased costs in producing these products and in exercise of its business judgment. Plaintiff admits that it entered into an Agreement with defendant Waldman dated February 1, 1970 whereby Waldman became a District Sales Manager but denies the remainder of the allegations contained in paragraph 23 of the Answer.

AS TO FOURTH COUNTERCLAIM

7. Plaintiff repeats and realleges its responses to paragraphs 15 through 23 of the Answer as repeated and realleged in paragraph 25 of the Answer.

8. Plaintiff denies the allegations contained in paragraph 26 of Answer.

AS TO FIFTH COUNTERCLAIM

9. Plaintiff repeats and realleges its responses to paragraphs 15 through 20 and paragraph 23 of the Answer as repeated and realleged in paragraph 27 of Answer.

10. Plaintiff denies the allegations contained in paragraphs 28, 29, 30 and 31 of the Answer.

AS TO SIXTH COUNTERCLAIM

11. Plaintiff repeats and realleges its responses to paragraphs 15 through 19 of the Answer as reasserted and realleged in paragraph 32 of the Answer.

12. Plaintiff denies the allegations contained in paragraphs 33, 34 and 35 of the Answer.

AS TO SEVENTH COUNTERCLAIM

13. Plaintiff repeats and realleges its responses to paragraphs 15 through 22 of the Answer as realleged and repeated in paragraph 36 of the Answer.

14. Plaintiff denies the allegations contained in paragraphs 37, 38, 39, 40 and 41 of the Answer.

AS TO EIGHTH COUNTERCLAIM

15. Plaintiff repeats and realleges each of its responses to paragraphs 15 through 22 of the Answer as repeated and realleged in paragraph 42 of the Answer.

16. Plaintiff denies the allegations contained in paragraphs 43, 44 and 45 of the Answer.

AS TO NINTH COUNTERCLAIM

17. Plaintiff admits the allegations contained in paragraph 46 of the Answer.

18. Plaintiff would state that the terms of the District Sales Manager's Agreement attached to Plaintiff's complaint as Exhibit "C" speaks for itself.

19. Plaintiff denies the allegations contained in paragraph 48 of the Answer in that said amount represented a draw against the two (2%) percent override.

20. Plaintiff denies the allegations contained in paragraph 49 of the Answer.

AS TO TENTH COUNTERCLAIM

21. Plaintiff admits the allegations contained in paragraph 50 of the Answer.

22. Plaintiff admits that defendant Waldman was eligible as a participant in its non-contributory profit-sharing plan during his employment with plaintiff.

23. Plaintiff denies the allegations contained in paragraph 52 of the Answer in that said profit-sharing plan is operated and controlled by trustees and plaintiff has no authority or control of the disposition of its funds and said non-contributory profit-sharing plan contains a liquidated damages provision whereby should an eligible participant terminate his employment with the company and go into competition thereafter within an eighteen month period from his termination, said former employee

will forfeit any benefits to which he might otherwise have become entitled.

AS TO ELEVENTH COUNTERCLAIM

24. Plaintiff repeats and realleges each of its responses to paragraphs 50 and 51 of the Answer as repeated and realleged in paragraph 53 of the Answer.

25. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the matters stated in paragraphs 54, 55, 56 and 57 of the Answer.

AS TO TWELFTH COUNTERCLAIM

26. Plaintiff admits that it pays its sales representatives, including defendant Waldman, according to its commission lists and the rules and regulations appurtenant thereto, but denies the remaining allegations contained in paragraph 58 of the Answer.

27. Plaintiff admits that it pays and credits commissions in accordance with its commission list and the rules and regulations appurtenant thereto and in accordance with the terms of the Sales Representative's Agreement and denies the remaining allegations contained in paragraph 59 of the Answer.

28. Plaintiff denies the allegations contained in paragraph 60 of the Answer.

29. Plaintiff admits that it has yet not rendered a final accounting to defendant Waldman but that it is standard operating procedure for such final accounting to be rendered within ninety days from the date of termination of the sales representative and plaintiff denies the remaining allegations contained in paragraph 61 of the Answer.

AS TO THIRTEENTH COUNTERCLAIM

30. Plaintiff denies that defendant Waldman is entitled to commissions other than as agreed in the Sales Representative's Agreement.

FIRST AFFIRMATIVE DEFENSE

31. Plaintiff would show that defendant's counterclaims fail to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

32. Plaintiff would show that defendants' counterclaims are barred by the applicable statutes of limitation.

THIRD AFFIRMATIVE DEFENSE

33. Plaintiff would show that defendants' counterclaims are barred by laches.

FOURTH AFFIRMATIVE DEFENSE

34. Plaintiff would show that any claims defendants have against plaintiff have been extinguished in full by accord

and satisfaction. Defendant Waldman's claims were doubtful in nature and his agreement to accept monies paid to him by plaintiff was in complete accord and satisfaction of any claims owed to defendant Waldman by plaintiff.

WHEREFORE, plaintiff demands that defendants' counterclaims be dismissed and that plaintiff be awarded judgment as prayed for in the complaint.

Dated: May 29, 1975

DE GRAFF, FOY, CONWAY & HOLT-HARRIS
Attorneys for Plaintiff

By: _____
MICHAEL G. BRESLIN
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90 State Street
Albany, New York 12207
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OF COUNSEL:

TOBOLOWSKY & SCHLINGER, ESQS.
1900 Southland Center
Dallas, Texas 75201

NOTICE OF MOTION
IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

ALBANY DIVISION

USAchem, INC., A Texas Corporation,

Plaintiff,

Civil Action
No. 75-CV-170

-against-

NOTICE
OF
MOTION

MELVIN R. WALDMAN and MELVIN R. WALDMAN,
d/b/a DYNACHEM,

Defendants.

TO: O'Connell and Aronowitz, P.C.
Attorneys for Defendants
Office and Post Office Address
100 State Street
Albany, New York 12207

PLEASE TAKE NOTICE, that the undersigned will bring the annexed motion on for hearing before this Court at the United States District Courtroom for the Northern District of New York in the Federal Building in the City of Albany, New York on the 2nd day of June, 1975 at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated: Albany, New York
May 21, 1975

DE GRAFF, FOY, CONWAY & HOLT-HARRIS
Attorneys for Plaintiff
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90 State Street
Albany, New York 12207
[518] 462-5301

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

ALBANY DIVISION

USAchem, INC., a Texas Corporation,

Plaintiff,

-against-

MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM,

Defendants.

Civil Action No. 75-CV-170

MOTION FOR PRELIMINARY INJUNCTION

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1. Plaintiff, USAchem, Inc. moves this court pursuant to Rules 65(a) and 43(e) of the Federal Rules of Civil Procedure for a preliminary injunction that would only enjoin the defendant Waldman from soliciting, selling, and otherwise diverting the plaintiff's customers to whom he sold on behalf of the plaintiff when he was employed by the plaintiff.

2. In the complaint, the plaintiff seeks injunctive relief as well as monetary damages and an accounting, based upon the defendant Waldman's breach of a covenant contained in his employment contract. At this point the plaintiff seeks only the narrow relief of enjoining Waldman from selling to plaintiff's

customers to whom Waldman sold while employed by the plaintiff.

3. The plaintiff's rights can only be preserved by returning the parties to the status quo as quickly as possible, in light of Waldman's admissions that he is selling to plaintiff's customers and his assertion that he intends to continue to do so, as set out in more detail in the attached affidavit of Michael G. Breslin.

4. The plaintiff does not seek to exclude the defendant Waldman altogether from his former territory, but only to stop his continued solicitation and selling to the customers to whom he sold for the plaintiff.

5. Plaintiff does not seek to deprive Waldman from his means of livelihood or to eliminate him as a competitor by this injunction, but only to preserve its customers and the relationship with its customers.

6. The delays encountered already in gathering information in support of this preliminary injunction warrant the granting of the injunction on the information furnished herewith.

7. Unless the preliminary injunction is granted, defendants will continue to engage in the aforesaid acts which have already resulted in substantial injury, loss and damage to the plaintiff and if allowed to continue will result in

further immediate and irreparable injury, loss and damage to the plaintiff, as appears in the complaint and affidavit attached hereto.

8. The granting of such preliminary injunction will not cause undue inconvenience or loss to the defendant and will prevent irreparable harm to the plaintiff.

WHEREFORE, plaintiff prays: that pursuant to Rules 65(a) and 43(e) of the Federal Rules of Civil Procedure the defendant Melvin R. Waldman and Melvin R. Waldman doing business as DYNACHEM, their agents, servants, employees and all persons in active participation with the defendants Waldman or DYNACHEM be preliminarily enjoined pending final hearing and determination of this action from:

> Soliciting, selling or attempting to solicit or offer for sale any disinfectants, soaps, detergents, cleaners, chemical specialties, paints, water treatments, maintenance chemicals, chemicals for the control of water pollution and chemicals for the improvement of turf, lawn and ground, insecticides, adhesives, glues, germicides, special coatings, degreasing and sanitary supply and floor maintenance materials and equipment and related products (all collectively hereinafter referred to as "products") to the customers of the plaintiff formerly sold by the defendant Waldman on behalf of the plaintiff within the Counties of Albany, Greene, Schoharie, Rensselaer, and Columbia in the State of New York or directly or indirectly diverting or taking

away or attempting to divert or take away any of such customers of the plaintiff or the business patronage of such customers.

Dated: Albany, New York
May 16, 1975

Michael G Breslin

By: MICHAEL G. BRESLIN
DE GRAFF, FOY, CONWAY & HOLT-HARRIS
Attorneys for Plaintiff
Office and Post Office Address
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Of Counsel

TOBOLOWSKY & SCHLINGER
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Dallas, Texas 75201

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, INC., a Texas Corporation,

Plaintiff,

-against-

MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM,

Defendants.

CIVIL ACTION
NO. 75-CV-170

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK:

COUNTY OF ALBANY : ss.:

MICHAEL G. BRESLIN, being first duly sworn, says:

1. That he is an attorney and member in good standing of the Bar of the United States District Court for the Northern District of New York, and associated with the firm of De Graff, Foy, Conway and Holt-Harris, attorneys for the plaintiff herein.

2. That he is familiar with the facts and circumstances of this action and all of the proceedings had heretofore, and that the sources of the information on the grounds as to his belief as to all matters herein stated are investigations made concerning the subject matter of this action, discussions

with other attorneys representing the plaintiff, and officers of the plaintiff corporation, and the review of the records of the plaintiff herein.

3. This affidavit is submitted in support of a motion made by the plaintiff pursuant to Rules 65(a) and 43(e) of the Federal Rules of Civil Procedure for a preliminary injunction enjoining the defendant Melvin R. Waldman (hereinafter referred to as "Waldman") and Melvin R. Waldman doing business as DYNACHEM from soliciting, selling or attempting to solicit or offer for sale products similar to and in competition with those sold by the plaintiff to the customers of the plaintiff formerly sold by the defendant Waldman on behalf of the plaintiff and from directly or indirectly diverting or taking away the customers of the plaintiff formerly sold by the defendant Waldman on behalf of the plaintiff.

4. This action was commenced to enjoin the defendant from his continuing breach of a noncompetition covenant in an employment contract with the plaintiff, to enjoin the defendant's continuing improper use of confidential information and trade secrets for the wrongful appropriation and solicitation of plaintiff's customers and other acts of unfair competition, for damages sustained by the plaintiff as a result of the defendant's

breach of contract and acts of unfair competition, for an accounting to the plaintiff for all commissions or profits received by the defendant by reason of sales to plaintiff's customers, and for punitive damages.

5. On April 11, 1975 the defendant Waldman was served with the complaint and a notice of deposition and production of documents pursuant to the order of this Court, dated April 8, 1975.

6. Thereafter on April 15, 1975, the defendant by order to show cause obtained an order over the objection of the plaintiff postponing the deposition and production of documents for two weeks to permit the defendant to gather the material requested for the deposition and production of documents.

7. To this date the defendant has made no motion for any protective order concerning the materials sought by the plaintiff.

8. On the scheduled date for the deposition of the defendant Waldman and the production of documents, May 1, 1975, the defendant Waldman appeared and answered certain questions and produced certain documents. However, the defendant Waldman refused to answer questions or produce documents concerning his solicitations and sales subsequent to the termination of his

employment with the plaintiff on February 3, 1975.

9. The defendant Waldman refused to answer said questions and to produce the requested documents and material on the grounds that the information sought was not relevant to the issues in this action, and was confidential information beyond the scope of discovery (Deposition of May 1, 1975, pp. 13-14, 84-86; attached hereto as Exhibit "A").

10. That the defendant's refusal to answer said questions and to produce the requested documents and material was unjustified and totally unsupported by law, is set forth in more detail in the moving papers for a motion to compel the answering of the said questions and the production of documents filed with the Court on May 7, 1975.

11. In answer to the questions put to him at the deposition taken on May 1, 1975, the defendant Melvin R. Waldman stated:

(a) that he was employed by the plaintiff and had executed a sales representative agreement on January 18, 1968, and a district sales' manager's agreement on February 1, 1970, both containing non-competition covenants. (Deposition of May 1, 1975, pp. 21-22, 46-47 and Plaintiff's Exhibits "3" and "14"; attached hereto as Exhibit "A").

(b) that plaintiff supplied him with certain sales material including a Presentation Book, Gears of Selling, Basic Products Manual, price list, commission list, Product Selling Guides and ultimately a customer list (Deposition of May 1, 1975; pp. 24-25, 28, attached hereto as Exhibit "A");

(c) that the plaintiff provided him with initial training for several weeks and thereafter attended sales meetings three times a year and had periodic phone conversations with his sales manager to discuss his operations (Deposition of May 1, 1975, pp. 30-35; attached hereto as Exhibit "A");

(d) that prior to being employed by plaintiff, the defendant Waldman had no experience selling chemical specialties beyond that of selling insecticides in a family retail store where he earned $800.00 per month and had no experience in selling to industrial and institutional accounts (Deposition of May 1, 1975, pp. 19-20; attached hereto as Exhibit "A");

(e) that during the course of his employment with the plaintiff, his annual compensation from the plaintiff rose from $34,310.00 in 1969, the first full year of his employment with the plaintiff, to $66,625.00 in 1974, the last full year of his employment with the plaintiff (Deposition of May 1, 1975, pp. 36, 54; attached hereto as Exhibit "A");

(f) that after the first few years, most of his sales were made to old accounts that he had been selling previously in his employment by the plaintiff (Deposition of May 1, 1975, pp. 41, 45; attached hereto as Exhibit "A");

(g) that on February 3, 1975, the defendant Waldman terminated his employment with the plaintiff (Deposition of May 1, 1975, pp. 56-57; attached hereto as Exhibit "A");

(h) that after the termination of his employment with the plaintiff on February 3, 1975, the defendant Melvin R. Waldman received a letter from the plaintiff requesting the return of all "literature, sample sprayers and all other items you have pertaining or belonging to the company. Your route book and daily analysis sheets should also be returned." (Deposition of May 1, 1975, p. 61 and Plaintiff's Exhibit 23 thereto; attached hereto as Exhibit "A");

(i) that the defendant Waldman failed to return a number of documents belonging to the plaintiff, including daily analysis sheets, which the defendant Waldman acknowledged constituted a complete customer list, despite the plaintiff's demand therefore (Deposition of May 1, 1975, pp. 64-66, 100-102; attached hereto as Exhibit "A");

(j) that defendant Waldman began selling mops, brooms and brushes under the name Elite Products in January of 1975, for which he had filed a certificate of conducting business under an assumed name on November 22, 1974, and changed the name from Elite Products to DYNACHEM at the time he terminated his employment with

the plaintiff and filed a certificate of conducting business under an assumed name, DYNACHEM LABORATORIES, on February 3, 1975 (Examination BeforeTrial, pp. 10-11; attached hereto as Exhibit "A"; and Certificates of Conducting Business Under An Assumed Name, Elite Products, dated November 22, 1974 and DYNACHEM LABORATORIES, dated February 3, 1975; attached hereto as Exhibit "B");

(k) that since the termination of his employment with the plaintiff on February 3, 1975, the defendant Waldman has solicited and sold products similar to and in competition with the products of the plaintiff to the plaintiff's customers with whom the defendant Waldman dealt while he was employed with the plaintiff (Deposition of May 1, 1975, pp. 7-8; attached hereto as Exhibit "A"); and,

(l) that defendant Waldman stated that he would continue to sell products similar to the products sold for the plaintiff to accounts sold while employed by the plaintiff unless enjoined by court order (Deposition of May 1, 1975, pp. 94-95; attached hereto as Exhibit "A").

12. That the defendant Waldman sold products while employed by the plaintiff, some 270 customers in the Counties of Albany, Greene, Schoharie, Rensselaer and Columbia.

13. That there are thousands of commercial establishments, including retail stores, wholesalers, dealers, distributors, manufacturers, construction companies, hotels, motels and

apartment complexes, governmental agencies, both state and local, educational institutions, both public and private, hospitals and nursing homes and golf and country clubs which are potential customers for the goods sold by the defendant Waldman.

14. That while employed by the plaintiff, the defendant Waldman made annual sales and received annual compensation and commissions as follows:

Year	Sales	Compensation & Commissions
1969	$111,673.00	$34,310.00
1970	152,384.00	43,282.00
1971	182,560.00	50,590.00
1972	172,173.00	58,129.00
1973	202,626.00	65,879.00
1974	$210,803.00	$66,625.00

15. That from the period February 3, 1975 through April 1, 1975, the two salesmen hired by the plaintiff to replace the defendant Waldman were able to make ten sales in the total amount of $1,297.00 and that although many visits and solicitations were made to customers formerly sold by the defendant Waldman, no sales could be made with said customers.

16. That in the corresponding periods of February 1, 1973 through March 31, 1973 and February 1, 1974 through March 31, 1974 the defendant Waldman made sales for the plaintiff in the amounts of $31,523.00 and $36,213.00 respectively.

WHEREFORE, the plaintiff requests that an order be made preliminarily enjoining the defendant Waldman from soliciting, selling or otherwise diverting plaintiff's customers to whom he sold while employed by plaintiff, pending a final determination of this action.

Michael G. Breslin

MICHAEL G. BRESLIN

Sworn to before me this

16th day of May, 1975

NOTARY PUBLIC, STATE OF NEW YORK
Commission Expires 3/30/76

your testimony, if you testify contrarily to it at the time of the trial, to what you're telling me here today. Now, with that explanation, that may help you some.

A. Yes.

Q. Thank you; where is that business located that you called 'Dynachem Laboratories'?

A. P. O. Box 532, Latham, New York.

Q. Do you operate out of your home, or do you have a place of business?

A. My own home.

Q. Do you say - your home?

A. My home.

Q. Where do you obtain your materials?

By Mr. Rivchin: Objection - irrelevant.

By Mr. Tobolowsky: Are you instructing Mr. Waldman not to answer the question?

By Mr. Rivchin: Yes.

By Mr. Tobolowsky: It's very material; he said he's operating his own business and he's operating it out of his home. I think we're entitled to know where he obtains his material.

By Mr. Rivchin: If you want to ask what type of materials he's selling, I'll

permit him to answer; it's also confidential information and trade secret.

By Mr. Tobolowsky: Well, we'd be more than pleased to offer you any protective order or stipulation for the protective order with respect to any confidentiality as to the supplies; we have a burden here, where he's obtaining products that can become material. It's possible they may have to be joined in this law suit.

By Mr. Rivchin: Still object and advise him not to answer - irrelevant and confidential material.

By Mr. Tobolowsky: Would you, at this time, be willing to stipulate a protective order to protect this information?

By Mr. Rivchin: You want to go off the record?

By Mr. Tobolowsky: I want to stay on the record.

By Mr. Rivchin: I've stated our position.

Q. What products does Dynachem sell?

A. Industrial chemicals.

Q. Similar to the products that you sold, while employed by plaintiff?

A. I don't know, sir.

Q. What do you mean - you don't know?

A. I'm not a chemist; I don't know if it's similar or not.

Q. Are they designed to do the same thing?

A. In many instances, yes.

Q. And, they're cleaners and de-greasers?

A. Yes.

Q. Detergents and soaps and disinfectants?

A. Yes.

Q. And, are you selling those type products to some of the same accounts that you sold, while with the plaintiff?

A. In some instances.

Q. When did you first originate 'Dynachem Laboratories'?

By Mr. Rivchin: If you don't recall - -

The Witness: I don't remember; right after I left.

Q. Was it prior to February the first, 1975?

A. I don't remember; it was after I sent in my resignation.

Q. So, after you left - -

A. If it was - -

Q. - - the employment of plaintiff?

A. Yes.

Q. When did you first decide to go into that business, Mr. Waldman?

A. The final decision?

Q. Yes, when did you first consider going into that business, Mr. Waldman?

A. I thought of it for years.

Q. When did you first - -

A. The final decision, after I left - the week that I left.

Q. Did you have it in mind when you resigned?

A. At the time?

Q. Yes.

A. Yes.

Q. Had you been to a printer to have labels made, prior to that?

A. I don't remember, but I would say - 'no'.

Q. What kind of printer printed your labels?

A. I don't have labels. When you say 'label', sir - are you talking about order forms and things like that?

Q. Is this a shipping label - (indicating.)

A. (No response.)

Q. That I'm showing you here?

A. When you said - 'label' - - I'm sorry; I thought you

meant product labels.

By Mr. Rivchin: Are you asking what printer, or when he had them printed?

Q. What printer printed it?

A. When you mentioned 'label', I thought you meant product labels - excuse me. The exact name? It's a printer in Dallas; they sent out circulars; I can get you the place.

By Mr. Tobolowsky: All right; mark this as plaintiff's one so that we're clear as to what we're referring to.

(Whereupon, Court Reporter marks document as: "Plaintiff's '1' for Identification.")

Q. Mr. Waldman, when did you first obtain your sales tax license for Dynachem Laboratories?

A. I obtained the sales tax license for Elite Products prior to leaving National.

Q. What was the Elite Products?

A. I tried to sell brooms.

Q. Brooms?

A. Yes.

Q. Were you selling those, while you were employed by the plaintiff?

A. Little, I did - I did, yes.

Q. Did you sell any other product while you were employed by plaintiff?

A. Mops, I mean - brooms, mops and brushes.

Q. Janitorial items?

A. Nothing to do with - -

Q. You were selling to the same accounts?

A. Yes.

Q. When you called on the accounts for National, did you also sell them Elite Products?

A. Yes.

Q. How long did you do that, sir?

A. Maybe a month - to the best of my knowledge; I can't give you an exact - - within a month, prior to leaving.

Q. You think it was only during the month of January, 1975?

A. Yes.

Q. When did you change the name from Elite Products to Dynachem?

A. When I decided - - the final decision was made to leave National.

Q. All right, sir; where are you selling on behalf of Dynachem?

A. Anywhere I can.

Q. And, do you have any record to indicate the volume of

sales of Dynachem?

A. Do I - -

Q. Since February the third, 1975?

By Mr. Rivchin: Object on the ground of irrelevant and advise my client not to answer.

By Mr. Tobolowsky: Volume of the sales is irrelevant?

By Mr. Rivchin: Yes, it is.

By Mr. Tobolowsky: I think it gets to the very heart of the law suit.

By Mr. Rivchin: I don't think; I think the heart of the law suit is the damage suffered by the plaintiff corporation, as a result of any breaches of Mr. Waldman's contract with them and those elements have - - those damages had nothing to do with any business he may have been doing, subsequent to the termination of his employment with the plaintiff.

By Mr. Tobolowsky: I'm sorry, I don't understand your position - post-employment as confidentiality?

By Mr. Rivchin: Correct.

By Mr. Tobolowsky: He admitted he operates his own business and is selling similar products.

By Mr. Rivchin: The issue - -

By Mr. Tobolowsky: The accounts he sold to previously, I think - the volume of his sales - is certainly material to this issue. Are you instructing your client not to answer?

By Mr. Rivchin: That's correct; on the ground that it's irrelevant to the issues in this law suit.

Q. Did you bring any records here with you today?

A. Yes.

Q. What records did you bring?

A. What do you mean by 'records'?

Q. I'm just asking you what products - -

A. Whatever I had from National.

Q. What records did you bring relative Dynachem - your own sales - since February 2nd, 1975?

A. None.

Q. And, did you do that on the instruction of your attorneys?

A. Yes.

Plaintiff's two for identification, and ask you if that's the application that you filled out in connection with yo initial employment by the plaintiff?

A. I don't remember, but my signature is on, so I would think it was.

Q. Do you thing you filled out any other applications?

A. I can't remember but I would say 'no' - I don't know.

Q. Did you furnish the information contained in the application?

A. Yes.

Q. Would you look at it, please?

A. Yes.

Q. Does it correctly reflect your educational background?

A. Yes.

Q. Does it correctly reflect your prior business experience?

A. Yes.

Q. Does it correctly reflect your marital status?

A. Yes; it's changed since - more children; I don't see it on here but - -

Q. How many children do you have, sir?

A. Five, sir.

Q. Now, sir, prior to your employment by National Chemsearc had you ever sold any industrial or maintenance specialty products?

A. When you ask that - I was in the retail business; I think we sold insecticides in the retail business; that would be the only time.

Q. Did you sell those types of products to industrial manufacturers -institutional accounts?

A. No sir.

Q. Does this application correctly reflect your earnings, prior to coming with National Chemsearch?

A. Amount of earnings - eight hundred a month - yes.

Q. At the time you came with the National Chemsearch, your earnings were eight hundred dollars a month from your prior employment?

A. Yes - family business; I worked for my mother.

By Mr. Rivchin: As long as I get a copy of it.

By Mr. Tobolowsky: Yes.

Q. In 1974, the last year you were with plaintiff, your earnings were in excess of sixty-five thousand dollars; is that correct?

A. When you say 'earnings', sir - are you talking gross salary they paid me?

Q. Yes.

A. Yes.

Q. Mr. Waldman, did you meet with anyone, other than Mr. Steinman in connection with your initial employment?

A. Yes.

Q. Who else did you meet with, sir?

A. Mr. Greenfield, in New York.

Q. In New York City?

A. Yes.

Q. And, was that at Eastern Airlines - 10 Rockefeller Plaza?

A. Yes.

Q. Did you have additional interviews in New York?

A. Yes.

Q. And, at that time, do you recall that you entered in an agreement?

A. (No response.)

By Mr. Rivchin: Off the record.

(After a brief discussion, off the record, the following continued:)

Q. Agreement, dated January 19th, 1968 - an executed copy of which, I'll hand you?

A. What was the question - I was given this - (indicating) and not knowing honestly where I was - - I assume that's what I signed - I needed a job.

Q. All right; now, sir, did you sign that in the office of plaintiff in New York?

A. Yes.

Q. All right; and, I'll also hand you a document entitled -

'Sales Representative's Compensation Agreement' - the same parties - bearing the same date - and ask you if you also signed that document at that time?

A. Yes.

By Mr. Tobolowsky: Counsel, do you want to mark one document or two?

By Mr. Rivchin: I think, two.

By Mr. Tobolowsky: All right; mark this - the Sales Representative's Agreement - "Plaintiff's '3'" and the Sales Representative's Compensation Agreement, "Plaintiff's '4'".

(Whereupon, Court Reporter marks documents as: "Plaintiff's '3' for Identification" and "Plaintiff's '4' for Identification.")

Q. Mr. Waldman, you testified you signed Plaintiff's three and four - -

A. Yes.

Q. - - in the office in New York?

A. Yes.

Q. Did anyone explain to you, the agreement?

A. No sir.

Q. Who did you sign it in the presence of?

A. Mr. Steinman.

Q. Did he tell you it was necessary for you to sign the

agreement in order to be employed?

A. Yes.

Q. Did Mr. Rosenbaum sign it at that time, or was the agreement mailed to you?

A. Mr. Rosenbaum was in another office; they came in with his signature; I never met him.

Q. You did not meet him at that time?

A. No sir - never met him.

Q. During the entire time you were employed?

A. Never met him.

Q. I hand you a copy of a letter dated January 19th, 1966, and ask if you recall receiving the original of that letter?

A. Yes.

By Mr. Tobolowsky: Mark that, please - Plaintiff's five for identification.

(Whereupon, Court Reporter marks document as: "Plaintiff's '5' for Identification."

Q. Mr. Waldman, in connection with your employment, did you take any tests - aptitude tests - in the office, there in New York?

A. No sir; I took it in - -

Q. Where did you take the tests at?

A. Motel, in Albany.

Q. Albany?

A. I might be mistaken; I know I went into the motel - whether I took it home and brought it to New York, I don't know; I don't remember.

Q. Did you do a mock sales for Mr. Steinman, or anyone else, demonstrating your sales ability?

A. Yes.

Q. Who advised you that you were hired?

A. Mr. Steinman and Greenfield shook hands with me.

Q. Did you receive any materials from the company, prior to going to New York on January 19th, 1968, for you to study for that meeting?

By Mr. Rivchin: The date again?

By Mr. Tobolowsky: January 19th, 1968.

The Witness: Materials to study?

Q. Yes.

A. I don't remember.

Q. Okay; did you receive any materials at the time that they told you, you were employed on January 19th, 1968?

A. Yes.

Q. What did they give you at that time, sir?

A. When I left the office, they gave me a bag, salesman' bag, and paraphenalia; when I say 'paraphenalia', order pad and novelty.

Q. Did he give you a book - Product Manual?

A. Yes.

Q. Now, sir, I hand you a copy of a letter addressed to you from Mr. Norman Steinman, dated February 20th, 1968, and ask you if you recall receiving the original of that letter?

A. I seen that letter several times, yes, yes.

Q. Now, sir, - -

By Mr. Tobolowsky: We'll ask the reporter to please mark this "Plaintiff's '6'".

(Whereupon, Court Reporter marks document as: "Plaintiff's '6' for Identification.")

Q. Mr. Waldman, the letter discusses a two-day orientation seminar on Thursday and Friday, February 29th and March 1st, at the Sheraton-Tenney Motor Inn at LaGuardia Airport, New York City; did you go to that meeting?

A. Yes.

Q. Did you bring with you, the items listed in that letter sir?

A. Presentation Book, Gears of Selling, Basic Manual, price list, commission list and the Product Selling Guides - - I have to assume, yes; I don't remember; I'd have to assume.

Q. Do you have any reason to think you didn't?

Q. And, was he a sales trainer?

A. I assume -- Sales Manager.

Q. Sales Manager?

A. Yes.

Q. Did he come into the area and attempt to work with you in your own territory?

A. Depending on what you mean by 'work'.

Q. What happened, then - tell us - what did happen?

A. He rode with me in the car and he made some sales for me - he carried the ball.

Q. And, did you observe his selling methods and techniques?

A. Yes.

Q. Did he bring any customer lists with him at that time?

A. No sir.

Q. When did you first receive any customer lists from the company?

A. I don't remember.

Q. And, how long did Mr. Segal work with you, during the initial training period?

A. Two days.

Q. Did you find that helpful?

A. Not very.

Q. Did you - -

A. Let me clarify that - with all due respect to him, I

found it helpful because he sold products - I mean, it had given me a little bit of an income, but - as far as learning - no sir.

Q. When did you receive your first follow-up training, and from whom?

A. Short time - two or three weeks afterward - with Mr. Steinman.

Q. Norman Steinman?

A. Yes.

Q. Was that in your territory, assigned in the Sales Representative Agreement?

A. Yes.

Q. Was it outside of that territory also?

A. I knew a little and he knew less - as far as the territories - we sold in another territory.

Q. Did you get credit for the sales?

A. Maybe I did; anyway, I had to eat the stuff; the customers didn't want it - I took it out anyway.

Q. And, how long was that training period?

A. I would think, two or three days.

Q. Did you receive any additional training in the first ninety days you were with the company?

A. I don't remember.

Q. Who was your immediate supervisor?

A. Norman Steinman.

Q. Did Mr. Steinman come back at any additional time to work with you during the year 1966?

A. Yes sir.

Q. Do you recall how many times?

A. I'm sure of one.

Q. Did you attend sales meetings during the year 1966?

A. Yes sir.

Q. Did you receive your weekly draw each week, during 1966?

A. Yes.

Q. Did you receive commision statements at the end of each month, relating to the sales that you made, and commisions you had earned?

A. On the 15th of the month.

Q. 15th of each month?

A. Yes.

Q. Do you recall how many sales meetings you did attend?

A. There were three or - -

Q. All right; were they generally held in the New York Area?

A. First couple of years, Rochester; afterward, in the New York Area.

Q. In New York?

By Mr. Rivchin: Are you referring to New York City?

By Mr. Tobolowsky: New York Area.

The Witness: It might be in New Jersey; Cherry Hill; it started in Rochester and moved me.

Q. How long did they last, sir?

A. Friday noon-time until Saturday - four o'clock.

Q. Did you prepare, and send in, daily reports or daily analysis sheets of your activities each day?

A. At the beginning; to whom, sir?

Q. Send them into the office in New York?

A. At the office in New York?

Q. Yes.

A. Made them out in triplicate; the original went to the plant and one went to New York.

Q. Now, the 'plant' you're referring to is what?

A. Monmouth Junction.

Q. And, at that time, you sent another copy to the office in New York City?

A. Yes.

Q. And, later, to Hackensack?

A. Not later to Hackensack - no.

Q. At some point you abandoned sending in the reports - -

A. Yes.

Q. - - to Mr. Steinman?

A. Yes sir.

Q. Did Mr. Steinman remain as your immediate supervisor during the entire time that you were employed by the plaintiff?

A. Yes.

Q. And, did you have - during your early employment, 1968 - periodic telephone discussions with Mr. Steinman?

A. Yes.

Q. And, did he call you, or did you call him?

A. Both.

Q. Did he attempt to motivate you to sell additional products and more sales?

A. I would say, 'yes'.

Q. Did he attempt to encourage you?

A. I would say, 'yes'.

Q. Now, for the year 1969, you remained in the employ of the plaintiff?

A. Yes.

Q. You were selling within the area described in the Sales Agreement - Sales Representative's Agreement?

A. Yes.

Q. And, did you attend three sales meetings during that year?

A. 1969?

Q. Yes.

A. Yes.

Q. You received an advance each week?

A. I don't know; I received a draw against commission each week.

Q. All right, sir; did you receive your commission statement each month?

A. Yes.

Q. And, if you had any commission above your earnings, they were paid to you?

A. Yes.

Q. Did you, during the year 1969, fill out daily analysis sheets?

A. I don't know.

Q. Did Mr. Steinman come into your territory and work with you?

A. I don't honestly know.

Q. You don't know if you got any additional training in 1969?

A. I can't remember but I would assume, maybe, once wit Mr. Steinman - I can't remember.

Q. Did you have period discussions with him over the phone?

A. Less frequently.

Q. Did you begin to achieve some measure of success during

the year 1969?

A. I started in 1968 and in 1969, I began to achieve some success.

Q. All right, sir; let's talk about the year 1970. Did Mr. Steinman continue as your immediate supervisor?

A. Yes.

Q. And, were you continuing to sell on behalf of the plaintiff in the territory described in your agreement?

A. Yes.

Q. Did you send in daily analysis sheets during that period?

A. You'll have to clarify 'daily analysis'.

Q. Daily reports?

A. I stopped putting that in because it wasn't necessary so, if I continued sending in sheets, it was customer analysis sales.

Q. By that time, you knew your customers well?

A. Some.

Q. You knew their likes?

A. Yes, some.

Q. Did you know what - you knew what products they had bought in the past?

A. I knew the products that I sold them.

Q. You knew, approximately, when they bought?

A. No sir.

Q. Was it necessary to go and see them often, was it?

A. Because of the territory I had, yes.

Q. And, is this a highly competetive business?

A. Yes.

Q. You had a number of companies that were also selling in the same area you were selling?

A. Yes.

Q. So, that, it was necessary to see your customers often; was it not?

A. No sir, because of the territory size.

Q. Size of the territory?

A. Yes.

Q. Did you ask for additional territory in 1972?

A. I don't know when, but I asked for it.

Q. All right; during the year 1970, you continued to receive commission statements each month?

A. Yes.

Q. And, you attended sales meetings?

A. Maybe two.

Q. You don't think you attended three?

A. I don't remember.

Q. Now, sir, in the year 1971, did you continue tosell in your assigned territory with the company?

A. Yes.

Q. And, Mr. Steinman was your supervisor?

A. Throughout.

Q. You communicated with him during that period of time on a periodic basis?

A. Probably more on a personal basis; we became friends.

Q. All right; and, you continued to solicit your customers on a daily basis?

A. Yes.

Q. How many solicitations would you make a day, on a normal day, in the years 1968, 1969 and 1970?

A. You want an estimate?

Q. Yes, please your best guess.

A. Maybe twenty.

Q. A day?

A. Yes.

Q. So that would mean you would make - see a hundred and twenty people a week?

A. I tried to just keeping going to make as much sales as I could.

Q. During the year 1969, you sold approximately a hundred and nine thousand dollars in your territory?

A. I believe you.

Q. All right; sir, you had gross commissions of thirty four thousand, three hundred ten dollars?

A. I don't know; I would - - I believe you.

sales?

A. I believe you.

Q. Now, about then, sir, you had a pretty close relationship with the accounts that you were selling?

A. Depends on what you mean by 'close relationship'.

Q. You were selling mostly the accounts that you had sold in 1968, 1969 and 1970, because you were not opening a lot of new accounts; is that correct?

A. Yes.

Q. Were you getting a lot of repeat business?

A. I was calling on new accounts; I was selling most of these.

Q. Yes; and, most of those were accounts that you had been selling over the term of your employment by the plaintiff?

A. Yes.

Q. By them, you knew the purchasing agents and other people in those various accounts on a personal basis, did you not?

A. Some.

Q. And, you knew what products you had sold them in the past - did you not?

A. Well, I had a pretty good idea, what I could remember.

Q. And, you knew what their needs were, did you not?

A. No sir.

Q. Oh; that was a constant matter of going in to determine what product they needed?

A. Constant thing of every call - selling.

Q. All right; sir, now, you had records - did you not, of what they had bought in the past?

A. No sir.

Q. You didn't maintain a route book?

A. No.

Q. You had one available to you, did you not?

A. Yes; at the beginning, yes.

Q. You didn't need to keep that?

A. I was too lazy; too tired.

Q. And, were you still continuing to make the twenty solicitations a day during that year?

A. Depending on how business was; I stayed on working.

Q. Fifty weeks a year?

A. Fifty-one weeks a year.

Q. During the year 1972, you continued to sell in your territory - did you not?

A. Yes.

Q. Did you ask for additional territory at that time?

A. I asked for additional territory all the time.

Q. All right; did they amend your sales representative's agreement and add the counties of Rensselaer and Columbia, effective as of May 22nd, 1972?

A. (No response.)

Q. I'll hand you a copy of an amendment to your agreement and ask you if you recall executing that?

A. What do you mean 'executing' it?

Q. Did you sign it?

A. Not to the best of my ability, I did not.

Q. You did not sign it?

A. To the best - - as far as I - - I can't remember; I don't think I did; I can't remember, but I've seen that letter.

Q. Did you start selling in Rensselaer and Columbia counties in May of 1972?

A. Limited.

Q. What do you mean by 'limited'?

A. They gave me that part.

Q. What part?

A. I don't know; they split it in half.

Q. Were you selling in those counties?

A. I went in to solicit, yes.

By Mr. Tobolowsky: Mark this as the next number.

(Whereupon, Court Reporter marks document as: "Plaintiff's '11' for identification.

Q. Now, sir, you continued in 1972 to receive commission statements each month?

A. Yes sir.

Q. And, you continued to receive your advances against commissions?

A. If it was - - each week I got - -

Q. - - a check?

A. Draw.

Q. Draw?

A. Yes.

Q. Were these additional - were they above the draw - each commission statement?

A. Yes.

Q. You continued to send in your orders to Monmouth Junction?

A. Yes.

Q. And, continued to solicit your assigned territory on this additional territory?

A. I continued to solicit business, yes.

Q. Did you attend sales meetings during that year?

A. What year?

Q. 1972?

A. I believe, two.

Q. Where were they located?

A. In the New Jersey - New York area.

Q. Did Mr. Steinman come up and work with you?

A. I don't recall.

Q. During the year 1972, you had gross billings of approximately a hundred and seventy one thousand dollars?

A. I'll take your word for it.

Q. Do you have any reason to believe that that's incorrect?

A. No sir; it's just I can't remember the figures; you have them in front of you.

Q. All right, sir; and, you had gross commissions of fifty five thousand dollars?

A. I believe so.

Q. You made eight hundred and thirty-seven sales?

A. Again, I take your word for it.

Q. Again, in the year 1971, you were selling predominately to the accounts you had sold to in the past?

A. Selling to or soliciting?

Q. Both.

A. Are you asking me if I solicited these customers?

Q. What did you do, sir?

A. I solicited customers and sold old customers and a few new ones.

Q. Now, during that year, you opened approximately thirty five new accounts - does that sound about right to you?

A. Yes.

Q. If you made eight hundred thirty-seven sales, you were

selling predominately to the accounts you were selling to in the past?

A. Yes.

Q. I'll hand you the W-2 for the year 1972, showing earnings of fifty-four thousand three hundred thirty-two dollars and thirty-eight cents, plus a letter from the National Chemsearch Corporation, showing additional benefits which you received during that year, for a total compensation of fifty-eight thousand, one hundred twenty-nine dollars and sixty-three cents, and ask you if you recall receiving those documents?

A. I think the additional amounts might be awards; I'm not sure.

Q. They might be vacations and - -

A. Might have been.

Q. - - other allowances, watches, or something which you had to pay tax on?

A. Yes.

By Mr. Tobolowsky: I'll ask the reporter to mark these as plaintiff's twelve and thirteen for identification.

(Thereupon, Court Reporter marks documents as: "Plaintiff's '12' for identification" and "Plaintiff's '13' for identification.")

Q. Mr. Waldman, did you - some time in the year 1970 - sign an additional agreement with the plaintiff called 'District Sales Manager's Agreement'?

A. Yes.

Q. I'm going to hand you a copy of a document and ask you if it's the agreement that you signed, called 'District Sales Manager's Agreement'?

A. That's my signature, sir.

Q. All right; do you recall whether it was sent to you in the mail or you went to New York to sign it?

A. New York.

By Mr. Tobolowsky: Yes; I ask it be marked for identification as plaintiff's fourteen.

(Whereupon, Court Reporter marks document as "Plaintiff's '14' for identification.")

Q. Mr. Waldman, in addition to your duties as salesman, did you also supervise other salesmen?

A. Yes.

Q. Did that commence in 1970?

A. Yes.

Q. And, did you receive additional compensation for those training responsibilities and duties?

A. You'll have to clarify yourself, because we're - -

Q. Did you get any additional money for the training you

By Mr. Tobolowsky: Mark these for identification.

(Whereupon, Court Reporter marks documents as: "Plaintiff's '15' for identification" and "Plaintiff's '16' for identification."

Q. The year 1974 - I'll hand you a copy of your W-2, which shows gross compensation of sixty-six thousand six hundred twenty-five dollars and the letter accompanying the W-2, which showed how that compensation was broken down and ask you if you received those for the year 1974?

A. Yes sir; the other compensation paid - - does that include - - is the two percent included there? I received it, yes.

By Mr. Tobolowsky: I'd ask these be marked for identification.

(Whereupon, Court Reporter marks documents as: "Plaintiff's '17' for identification" and "Plaintiff's '18' for identification."

Q. During the years 1973 and 1974, you continued to receive certain awards for your sales effort, did you not?

A. Yes.

Q. I'll hand you what I believe to be a number of letters sent to you - one being dated April 29th, 1974,

reflecting that you had won an award, and ask you if you recall receiving the original of that?

A. Yes.

By Mr. Tobolowsky: Mark this for identification.

(Whereupon, Court Reporter marks document as: "Plaintiff's '19' for identification.")

Q. I'll hand you a copy of a letter dated April 2nd, 1974 from Norman Steinman addressed to you, speaking about your sales efforts during the first three months of 1974, and ask you if you received the original of that?

A. Yes.

By Mr. Tobolowsky: Mark this for identification.

(Whereupon, Court Reporter marks document as: "Plaintiff's '20' for identification.")

Q. Mr. Waldman, did you begin to make up your mind to leave National Chemsearch in the latter part of 1974?

A. Did I make it up? I thought of it, sir.

Q. You didn't attend the year-end sales meeting, did you?

A. I did, sir.

Q. I'm going to hand you a copy of a letter dated January 2nd, 1975 and ask you if that doesn't reflect that you did not?

A. That's my wife.

Q. 'Hal' was writing to your wife?

A. Yes sir.

Q. Did you ordinarily take your wife?

A. To Christmas meetings, most of the times; we had no babysitter at the time.

By Mr. Tobolowsky: Mark this for identification.

(Whereupon, Court Reporter marks document as: "Plaintiff's '21' for identification.")

Q. You received a year-end vacation award at the end of 1974 of twelve hundred and fifty dollars; did you not?

A. Yes sir.

Q. I hand you an original of a letter dated February 3rd, 1974, addressed to Mr. Norman Steinman, signed by you whereby you announce your resignation; did you prepare and sign that letter?

A. Yes.

Q. Did you type it yourself?

A. Yes.

Q. Did you have any discussion with Mr. Steinman prior to sending him this letter?

A. Concerning what, sir?

Q. Anything.

A. Yes.

Q. What did you tell him?

A. I told him nothing; he didn't know I was leaving; he called me on the phone.

Q. He called after receivin; the letter?

A. No; I handed him that letter.

Q. You took it to New York?

A. He came up here.

Q. Did you tell him you were leaving?

A. Yes.

Q. He came up to see you?

A. No sir; he came up to see me and I told him I was leaving and handed him the letter.

Q. Do you know why he came up to see you?

A. Yes.

Q. Why?

A. Sales - my sales had dropped.

Q. What?

A. My sales had dropped.

By Mr. Tobolowsky: Mark this for identification.

(Whereupon, Court Reporter marks document as: "Plaintiff's '22' for identification.

Q. Had your sale dropped because you were not trying to make sales?

A. No way.

A. I had for years thought of going into business; I wasn't sure if I was going to go for myself - either way and - -

Q. Do you recall anything else said at that time, sir?

A. Yes; the way my wife thought of it.

Q. Yes?

A. She said - I want to keep my husband; I don't want him to have a heart attack - the crux of it.

Q. Anything else, sir?

A. I don't remember.

Q. Now, sir, I'll hand you a copy of a letter from Norman Steinman, addressed to you, dated February 3rd, 1975, and ask if you recall receiving the original of that letter?

A. Yes.

By Mr. Tobolowsky: Mark this for identification.

(Whereupon, Court Reporter marks document as: "Plaintiff's '23' for identification.")

Q. Mr. Waldman, plaintiff's exhibit twenty-three for identification - when you received this letter of February the third, what did you do, sir?

A. What did I do with that letter?

Q. Yes.

A. I would think, the best of my knowledge, I put it in

A. The only reason I kept it for - -, first of all Chemsearch has copies of it - they have it.

Q. I'm asking you if you have it, sir?

A. I'm sorry?

Q. I'm asking if you have those records in your possession?

A. Yes sir.

Q. They have all the information about customers that you sold while with plaintiff - do they not?

A. Yes.

Q. And, the purchasing agent's name?

A. No sir.

Q. Then, where are those records?

A. At 11 Vintrano Lane.

Q. We can - -

A. I got one here too.

Q. We're contending that they're the property of plaintiff and would like for them to be returned. If you'd please ask your attorney to please send them over to Mr. Breslin. If he feels he has to keep any of them for the purpose of the Internal Revenue, they'll be available for him.

By Mr. Rivchin: How about for the purpose of the litigation?

By Mr. Tobolowsky: Available at any time for him; we contend they're our property

and whether confidential or not, they're our property and we'd like their return; if he needs it for I.R.S. or if you need them for litigation, Mr. Breslin will make ther available to you by mutual agreement at an agreeable time - is that satisfactory?

By Mr. Rivchin: I'll have to deny that request because I don't believe that it's National Chemsearch's property; as I understand it, the original and one copy of these documents were sent to National Chemsearch and these were to be retained by Mr. Waldman for his own purpose.

By Mr. Tobolowsky: Do you content he's entitled to retain those, after his employment is terminated?

By Mr. Rivchin: Yes, I do.

By Mr. Tobolowsky: We demand that they be returned and you stated your position on the record.

By Mr. Rivchin: That's correct.

By Mr. Tobolowsky: We've stated ours.

By Mr. Rivchin: We've produced those

By Mr. Rivchin: If he can.

Q. Well?

A. What was the question?

Q. One of your better accounts?

A. Was a good account.

Q. Made a number of sales, did you?

A. Yes; throughout the years, yes.

Q. Since February the third, 1975, have you been back to solicit them on behalf of Chemsearch Laboratories?

By Mr. Rivchin: Again, I object to it and advise him not to answer on the grounds as previously expressed.

By Mr. Tobolowsky: On the grounds - -

By Mr. Rivchin: - - as previously expressed.

By Mr. Tobolowsky: Counsel, so the record will be clear, it appears to me that we're going to have to ask the Court for an additional order compelling the defendant, Mr. Waldman, in response to a number of questions that I have asked today and that you have advised him not to answer - will you please state for the record, your reasons for instructing your

client not to answer questions with reference to solicitations, or sales, made by him since February 3rd, 1975, to accounts that he has sold while he was with plaintiff?

By Mr. Rivchin: I believe that I clearly expressed those reasons earlier in this examination and have repeated them several times; if you want to check back in the record, I'll be glad to confirm what has already been placed in the record.

By Mr. Tobolowsky: Now, sir, your objections - continuous objections - seem to have been as to relevancy to the issues in this law suit?

By Mr. Rivchin: And, also, that it's - - it involves confidential information.

By Mr. Tobolowsky: All right; with respect to confidential information, you recall we offered to - -

By Mr. Rivchin: Are you examining me or -

By Mr. Tobolowsky: Asking if you'll respond for the record - - I think we'll have to go before the Court; you recall th

I requested, or suggested, I should say, that we'd be pleased to enter into a stipulation which would have the effect of a protective order involving confidential information and I understand it to be your position that you're not interested in such a stipulation?

By Mr. Rivchin: That's correct.

By Mr. Tobolowsky: Now, sir, with respect to the other objections that you've made, you make those in the light of your interpretation of Federal rules of procedures with respect to discovery?

By Mr. Rivchin: That's correct and additional substantive law.

Q. Mr. Waldman, did you know Mr. Solomon in Massachusetts when you were employed by plaintiff?

A. Know Mr. Solomon?

Q. In Massachusetts?

A. I think so; yes.

Q. What - - do you know what he did?

A. What he did?

Q. Yes.

A. When?

Q. When you were with National Chemsearch and he was with

Q. Did you tell him the name of your company?

A. No sir.

Q. Mr. Waldman, you've testified that you're doing business under a d/b/a of Dynachem Laboratories; is that correct?

A. Yes sir.

Q. That the records of that company are maintained at your home; is that correct?

A. Yes.

Q. Mr. Waldman, is it your intention to continue to solicit or sell on behalf of Dynachem, or on behalf of anyone else, or on behalf of yourself, products similar to the products you had sold with the plaintiff - to accounts that you solicited and sold, while you were with the plaintiff?

By Mr. Rivchin: Object to the form of the question but will advise my client to answer, if he's able to.

The Witness: I would think in a situation where I have to maintain a living for my family, I probably would be forced to do anything I can.

Q. Would it be correct that it's your intention, unless the court enjoins you, that it's your intention to sell similar products to the products you sold for the

plaintiff, to accounts that you sold while you were employed by the plaintiff?

A. It's my intention to do what I have to do to support my wife and five children.

Q. Does Dynachem have its own shipping facilities?

By Mr. Kivchin: Object on the ground of relevancy but I'll advise him to answer, if he can.

The Witness: I don't understand what you mean by 'shipping facilities'.

Q. Whatever materials you sell on behalf of Dynachem, do you ship them to whoever you sell them to or do you have some supplier that ships for you?

A. Suppliers will ship.

Q. Your suppliers drop-ship the sale made on behalf of Dynachem?

A. In most parts.

Q. Do you bill the accounts that you have sold on behalf of Dynachem, or is that done by your suppliers?

A. I do.

Q. Then, the invoices would show payment at your Post Office Box, or the one indicated on this label, or your address?

A. Yes.

By Mr. Tobolowsky: If he knows.

Q. In an envelope, sir, in that box that we've just described, are a number of daily analysis sheets; is that correct?

A. Yes sir.

Q. Were those prepared in your hand-writing?

A. Yes sir.

Q. Did you prepare them?

A. Yes.

Q. Now, when I asked you about daily sheets earlier, I understood your testimony to be that you had quit preparing them.

A. No sir.

Q. Then, I was incorrect?

A. Yes.

Q. So, you continued to prepare daily anaysis sheets?

A. Weekly.

Q. You did it on a weekly basis?

A. Bi-weekly; I stopped sending them to Hackensack - also sent them to the plant - Monmouth.

Q. So, that, in addition to the daily analysis sheets, which you've produced here today, which looks to be like fifty or seventy-five sheets - -

A. That's one year.

Q. That's one year?

A. Yes sir.

Q. Do you have them for each year?

A. Yes sir.

Q. Now, I ask again: Would not these daily analysis sheets in your possession, constitute a complete customer list?

A. No sir.

Q. Every account you've ever sold while with the plaintiff?

A. No.

Q. Or, I should say, doesn't it?

A. No sir.

Q. Why doesn't it?

A. Because I don't look at them from year to year.

Q. I didn't ask that. Did it not constitute a complete customer list - I asked you?

A. Yes.

By Mr. Tobolowsky: Again, I'll repeat our request that these daily analysis sheets be delivered to counsel for plaintiff during this litigation. First of all, we maintain that it's our property; secondly, we maintain that it's either your customers, or - and, therefore, our customers' list, and confidential material is ours and we ask

that they be returned to us without delay.

By Mr. Rivchin: I'll repeat again, my denial for the same reasons as mentioned heretofore and, in addition to the number of items you've just described in the book, there are a number of other pieces of materials here which include National Chemsearch Tech Sheets.

Q. Have you sent any of these tech sheets to prints for copies?

A. No sir.

Q. Are you using the tech sheets on behalf of Dynachem in any manner?

A. No sir.

Q. You have some labels here also; are you using the labels in any fashion on behalf of Dynachem?

A. Drum labels, no sir.

Q. Have you sent these labels to your - -

A. No sir.

Q. - - printer to have copies made?

A. No sir.

By Mr. Rivchin: Let him ask the question.

The Witness: All right; no sir.

Q. In addition to the other items I've described, there's

Waldman's Sales Representative's Agreement is reproduced as Exhibit "A" attached to the Complaint on page 20a of this Appendix.

Waldman's District Sales Manager's Agreement is reproduced as Exhibit "C" attached to the Complaint on page 24a of this Appendix.

119a

cc: J. Cleveland
P. Murphy
File ✓

February 3, 1975

Mr. Melvin R. Waldman
11 Vatrano Lane
Loundenville, N. Y. 12211

Dear Mel:

We regret that our association together has come to an end. We hope that the future presents many good things to you.

This will acknowledge receipt of your resignation terminating the employment relationship between us as of February 3, 1975. Also in accordance with our understanding, there will be no further advances against commissions forwarded to you and your insurance coverage will be discontinued in accordance with the terms of the policy.

Although we extended our best efforts to give expert training and supervision and to furnish high quality products, this business is not for everyone. We hope that the training you received here will help you to succeed in other lines of endeavor.

Within seven days, will you pack the sample line in corrugated boxes and have the entire line returned to us by a motor freight line, freight collect, to Irving, Texas. For your convenience, we enclosed a partially completed bill of lading and shipping labels. Kindly return all literature, samples, sprayers and all other items you have pertaining or belonging to the company. Your route book and daily analysis sheets should also be returned by parcel post to my attention at 401 Hackensack Avenue. Enclosed you will find a separate addressed label for this purpose and we will be happy to reimburse you for the postage.

This letter will also remind you that the Sales Representative's Agreement, which you signed, contained certain covenants which, among other things, restricted your selling, offering for sale or soliciting the sale of products similar to those you sold for the company in your assigned territory and further restricted

x

your divulging trade secrets and confidential information. We know that you are aware of these provisions and will fully comply. We further remind you that you receipted for donfidential information which was given you at the time of your employment and you agreed to return such confidential information and all other confidential information acquired by you during your employment upon termination, without using it or divulging it to others or making copies thereof.

We have enjoyed knowing you and trust that whatever new association you make turns out well for you.

Sincerely yours,

NATIONAL CHEMSEARCH,
a division of USAchem, Inc.

Norman Steinman
Division Manager

NS:gr

117 X 103 – Certificate of Conducting Business under an Assumed Name

NATIONAL LEGAL SUPPLY, INC.
66 Beaver St., Albany, N.Y. 12207

EXHIBIT "B" ANNEXED TO AFFIDAVIT OF
MICHAEL G. BRESLIN

The undersigned do hereby certify that they *intend to now conduct or transact business under the name and style of ELITE PRODUCTS

at Loudonville, N.Y. in the County of Albany State of New York, and do further certify that the true and real full name of the person conducting or transacting the said business, with the residence and business address of said person, and the age of any who may be infants, are as follows:

NAME Specify which are infants and state ages.	RESIDENCE
MEL R. WALDMAN	11 VATRANO LANE LOUDONVILLE, N.Y.
JANE A. WALDMAN	11 VATRANO LANE LOUDONVILLE, N.Y.

In Witness Whereof, have this 22 day of NOV 1974, made and signed this certificate.

Mel R Waldman

Jane A Waldman

ALBANY COUNTY CLERK'S OFFICE
NOV 22 10 32 AM '74
ALBANY, N.Y.

No. 4685

STATE OF NEW YORK
COUNTY OF ALBANY, CLERK'S OFFICE } ss.:

I, JAMES J. COYNE, JR., Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, DO HEREBY CERTIFY that I have compared the annexed copy with the original thereof filed in this office on the 22 day of Nov 1974 and that the same is a correct transcript therefrom, and of the whole of said original.

IN TESTIMONY WHEREOF, I have hereunto set my name and affixed my official seal, this 13 day of March 1975

EXHIBIT "B"

X 103 – Certificate of Conducting Business under an Assumed Name

NATIONAL LEGAL SUPPLY, INC.
66 Beaver St., Albany, N.Y. 12207

The undersigned do hereby certify that They *intend to - now conduct or transact business under the name and style of DYNA-CHEM LABORATORIES

at P.O. Box 532 LATHAM, N.Y 12110 in the County of ALBANY

State of New York, and do further certify that the true and real full name of the person conducting or transacting the said business, with the residence and business address of said person, and the age of any who may be infants, are as follows:

NAME Specify which are infants and state ages.	RESIDENCE
MELVIN R. WALDMAN	11 VATRANO LN. Loudonville NY 12211
JANE A. WALDMAN	11 VATRANO LN. Loudonville N.Y. 1221

ALBANY CO. CLERK'S OFFICE
FEB 3 11 03 AM '75
RECEIVED
ALBANY COUNTY CLERK

FEB -3-75A0022 TA $*****3.00

In Witness Whereof, We have this 3 day of FEBRUARY 1975, made and signed this certificate.

Melvin R. Waldman

Jane A. Waldman

No. 4684

STATE OF NEW YORK
COUNTY OF ALBANY CLERK'S OFFICE } ss.:

I, JAMES J. COYNE, JR., Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, DO HEREBY CERTIFY that I have compared the annexed copy ABV with the original thereof filed in this office on the 3 day of 2-6 19 75 and that the same is a correct transcript therefrom, and of the whole of said original.

IN TESTIMONY WHEREOF, I have hereunto set my name and affixed my official seal, this day of

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, INC., a Texas Corporation,

Plaintiff,

-against-

MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM,

Defendants.

CIVIL ACTION
NO. 75-CV-170

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

STATE OF TEXAS)
)
COUNTY OF DALLAS)

NEAL E. YOUNG, being first duly sworn, says:

1. That he is an attorney and member in good standing of the Bar of the United States District Court for the Northern District of Texas, the Second Circuit Court of Appeals for the United States, and associated with the firm of Tobolowsky & Schlinger, one of the counsel of record for Plaintiff herein.

2. That as one of the counsel of record in this cause, I have had occasion to examine and compare various records produced by both parties in this cause pursuant to request for production including the following:

(a) Copies of invoices produced by Defendant Waldman including all paid invoices and all account receivable invoices which purport to show all sales made by Defendant Waldman of chemical specialty

products from February 3, 1975 up through May 27, 1975;

(b) The customer list of Plaintiff which includes all of the customers that Defendant Waldman solicited and sold on behalf of Plaintiff during his employment with Plaintiff;

(c) The records of Plaintiff as to each of the customers sold by Defendant Waldman in the 18-month period prior to his termination on February 3, 1975, including their names, addresses, products purchased, dates of purchase, prices paid for the products, purchasing agents and quantities purchased;

(d) The entire employment record of Defendant Waldman while employed by Plaintiff;

(e) The suppliers of chemical specialty products used by Defendant Waldman since February 3, 1975.

3. That after having compared and examined these records I have determined the following to be true:

(a) That Defendant Waldman has made sales of chemical specialty products since February 3, 1975, in the amount of $34,870.98 within the territory in which he worked on behalf of the Plaintiff;

(b) That of the $34,870.98 in chemcial specialty sales, he had sales in the amount of [illegible]195 to customers that he formerly sold on behalf of Plaintiff;

(c) That Defendant Waldman has made 184 sales of chemical specialty products since February 3, 1975 and of these sales 169 of them were to customers that he formerly sold on behalf of Plaintiff;

(d) That 92% of Defendant Waldman's sales of chemical specialty products have been to customers that he formerly sold on behalf of Plaintiff;

(e) That all of the sales of chemical specialty items except one were to customers in the territory in which he worked on behalf of Plaintiff.

4. That attached hereto as Young Affidavit Exhibit 1 is a file folder in which there is incorporated 185 invoices as produced by Defendant Waldman which show his sales of chemical specialty products since February 3, 1975 on behalf of Dynachem and such invoices are incorporated herein as if fully set out and proffered as evidence in support of this affidavit.

5. That in addition to the above, my examination of the aforementioned records shows that as well as selling chemical specialty items to his former customers, Waldman is engaging in other acts of unfair competition including using trade names for his products that are deceptively similar to the trade names of Plaintiffs products in an effort to pass off his products as being the same as or similar to Plaintiff's products.

Further Affiant saith not.

Neal E. Young

SUBSCRIBED AND SWORN TO BEFORE ME by Neal E. Young this 31st day of May, 1975.

Notary Public in and for Dallas County Texas

124a-1

EXCERPT FROM DYNA-CHEM INVOICES, DOCKET ENTRY #16

INVOICE

DYNA-CHEM LABORATORIES

P. O. BOX 532 • LATHAM, NEW YORK 12110 • PHONE 518-462-3504

+ST

OLD TO

Windham Ashland Schools

Windham, New York

SHIPPED TO

Windham Ashland Schools
c/o R. Cross
Bus Garage
Windham, New York

ATE	DATE SHIPPED	SHIPPED BY	OUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
/23	2/6/75	Holman Trans.		Dest.	net 30	12 00010T

UANTITY	DESCRIPTION	PRICE	AMOUNT
20 gal.	$ (4X5gal.) MC-4 Windshield De-icer Bus Spec.	5.50 gal.	110.00
	Freight		11.75
	Total Due		121.75

124a-2

PLAINTIFF'S EXHIBIT #23 ANNEXED TO WALDMAN'S DEPOSITION
DOCKET ENTRY #17

LAW OFFICES OF
TOBOLOWSKY & SCHLINGER
A PROFESSIONAL CORPORATION
1900 SOUTHLAND CENTER
DALLAS, TEXAS 75201

EDWIN TOBOLOWSKY
HENRY D SCHLINGER
GERRY N. WREN
W. H. REES, JR.
DOLPH B. H. SIMON
RAYMOND J. TERMINI
NEAL E. YOUNG
IRA E. TOBOLOWSKY
ROBERT C. CHEEK

TELEPHONE 742-9705
AREA CODE 214

March 21, 1975

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Melvin Waldman
11 Vatrano Lane
Loudenville, N. Y. 12211

Dear Mr. Waldman:

We represent and are writing you on behalf of your former employer, National Chemsearch, a division of USAchem, Inc. During the time you were employed by our client, you signed a Sales Representative's Agreement which provided, among other things, that you would not, during the term of your employment, and for 18 months thereafter, solicit, sell or attempt to sell products similar to the products of our client within your former assigned territory which was:

counties of Albany, Greene and Schoharie in the State of New York. Your agreement was amended to add the counties of Rensselaer and Columbia.

According to our client's records, your employment was terminated on February 3, 1975.

Our client advises that it has evidence that you are, in fact, violating the covenants contained in your agreement and within the period of the post-employment restriction.

Demand is hereby made that you cease and desist any further violations of your agreement.

Unless you timely comply with the demand herein made, our client has authorized us to seek to enforce its rights to injunctive relief and damages in a court of competent

jurisdiction. The post-employment covenants contained in your agreement have been upheld in a number of courts, including several state courts and a number of United States District Courts.

We trust you understand the views herein expressed and will immediately give us your written assurance that you have discontinued any further violation of your agreement with our client.

Unless we receive your assurance that you have discontinued any further violations, we shall take necessary action to protect our client's rights without further notice.

Sincerely,

Edwin Tobolowsky

ET:cg

cc: Mr. Melvin Waldman (Regular Mail)
Mr. Ralph Young

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

No. 215020

SENT TO

POSTMARK OR DATE

STREET AND NO.

P.O., STATE AND ZIP CODE

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES
1. Shows to whom and date delivered ..... 15¢
With delivery to addressee only ..... 65¢
2. Shows to whom, date and where delivered ... 35¢
With delivery to addressee only ..... 65¢

DELIVER TO ADDRESSEE ONLY ..... 50¢

SPECIAL DELIVERY (extra fee required) .....

PS Form 3800 Apr. 1971

NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL

(See other side)

• GPO : 1972 O - 460 [illegible]

SENDER: Name to [illegible] Wellman

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BOX(ES)

(Additional charges required for [illegible])

Deliver ONLY to addressee

RECEIPT

Received the numbered article described below.

REGISTERED NO.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

CERTIFIED NO.

215020

INSURED NO.

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

SHOW WHERE DELIVERED (only if requested) [illegible]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, INC., a Texas Corporation,

Plaintiff,

-against-

MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM,

Defendants.

CIVIL ACTION
NO. 75-CV-170

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

STATE OF TEXAS)
)
COUNTY OF DALLAS)

ALLEN PIASSICK, being first duly sworn, says:

1. That he is Treasurer of USAchem, Inc. and in charge of the books and records of accounts for Plaintiff herein.

2. That he has examined those books and records and is fully familiar with the costs of hiring, training, supporting in the field sales representatives of USAchem, Inc. and in particular in National Chemsearch Division and can state factually as follows:

(a) That for the most recent fiscal year such cost was $6,730.00 per man;

(b) That the net profit of USAchem for the latest fiscal period is 15.8% of its gross sales;

(c) That the percentage of profitability of Melvin Waldman, Defendant herein, as a sales representative on behalf of USAchem's National Chemsearch

Division for the last calendar year of his employment was 35.3% of his gross sales;

(d) That from my examination of the company records I have determined that Defendant Waldman was one of the most profitable salesmen for USAchem in the entire country and he achieved one of the highest volumes of sales of any of the company's sales representatives;

(e) That I have been able to determine from my examination of the records that the company has been able to make very few sales of National Chemsearch products to the accounts that were formerly serviced by Defendant Waldman and that it is suffering substantial but incalculable damages by Mr. Waldman's continuing to sell to those customers that he formerly sold on behalf of National Chemsearch and that unless he is enjoined we will continue to suffer irreparable injury;

(f) That from an examination of the sales records of an average of 1199 salesmen employed by USAchem, Inc. during the year I found Mr. Waldman to be the sixth largest earner of all salesmen. Waldman's sales were 3.4 times the average sales of all salesmen of USAchem, Inc.

Further Affiant saith not.

ALLEN PIASSICK

SUBSCRIBED AND SWORN TO BEFORE ME by Allen Piassick this 31st day of May, 1975.

Notary Public in and for Dallas County, Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, INC., A Texas Corporation,

Plaintiff,

Civil Action
No. 75-CV-170

- against -

AFFIDAVIT

MELVIN R. WALDMAN and MELVIN R. WALDMAN, d/b/a DYNACHEM,

Defendants.

STATE OF NEW YORK:
COUNTY OF ALBANY : ss.:

MICHAEL G. BRESLIN, being first duly sworn, says:

1. That he is an attorney and member in good standing of the Bar of the United States District Court for the Northern District of New York, and associated with the firm of De Graff, Foy, Conway and Holt-Harris, attorneys for the plaintiff herein.

2. That he is familiar with the facts and circumstances of this action and all of the proceedings had heretofore, and that the sources of the infomation on the grounds as to his belief as to all matters herein stated are investigations made concerning the subject matter of this action, discussions with other attorneys representing the plaintiff, and officers of the plaintiff corporation, and the review of the records of the plaintiff herein.

3. That in applying for employment with the plaintiff, the defendant Melvin R. Waldman stated that he was a college graduate with a Bachelor of Science in Economics and as his qualification for the employment he had "8 very successful years of retailing, took [an] antiquated business, in [a] dead town, [and] revitalized it [and] doubled [its] volume and profit margin." (Application of Melvin R. Waldman, attached hereto as Exhibit 1).

Michael G. Breslin

MICHAEL G. BRESLIN

Sworn to before me this
2nd day of June, 1975

Stephanie L. Doty

NOTARY PUBLIC, STATE OF NEW YORK
My Commission Expires 3/30/76

129a EXHIBIT "1"

Melvin R. Waldman
Applicants Name

. Hoffman Dr.
Address

Latham N.Y. 12110
City State

518-785-9082
Phone

The National Story in Brief. . .

1 pm ~~Floor~~ FR/

National Chemsearch Corporation was founded in Dallas, Texas in 1919. Today it is one of the leading manufacturers in the field of chemical specialties. National products are sold only to the ultimate consumer serving such vital areas as industry, schools, hospitals, municipalities, food plants, buildings and institutions. Some of the basic chemical products manufactured and marketed by National Chemsearch are:

Sewage Chemicals
Water Treatments
Industrial Chemicals
Weed Killers
Insecticides
Municipal Chemicals
Industrial Paints and Coatings
Specialty Chemicals
De-greasers
Solvents
Liquid Fertilizers
Liquid Floor Waxes and Cleaner

RESEARCH

Modern laboratories and manufacturing facilities are located in the main plant in Irving, Texas (a suburb of Dallas). We also maintain manufacturing facilities in Princeton, New Jersey; Sunnyvale, California; and Toronto, Canada. Other plants and warehouses are located in Europe and Latin America.

A dynamic research program is constantly maintained in our laboratories in order to provide our customers with the most modern chemical products.

A SALES CAREER WITH NATIONAL

The "Stars" of the National team are its Sales Representatives who earn excellent incomes in a growth career opportunity. The products sold are required by industry and institutions. National does not sell for resale, but rather directly to the industrial user, in bulk packaging and drums. Earnings are far above average, but the work requires long hours, some travel, dedication and sales ability.

Management is aware that nothing happens until something is sold. Each member of the National sales organization plays a vital part in the overall success of this Company. Careful selection of sales representatives is important. Qualifications include sound judgment coupled with enthusiasm, direction of purpose, vitality and good sales ability.

NATIONAL CHEMSEARCH®

NATIONAL CHEMSEARCH CORPORATION
DALLAS · ST. LOUIS · NEW YORK · LOS ANGELES
TORONTO · LONDON · PARIS · MEXICO CITY

ALL INFORMATION WILL BE HELD IN STRICTEST CONFIDENCE

Employment Application

130a

se PRINT plainly. This application will become a permanent part of your personnel record if you are employed:

ne Melvin (First) Robert (Middle) Waldman (last) So. Sec. No. 050-30-2516

ress 11 Hoffman Dr. (Street and No.) Latham (City) N.Y. (Zone) (State) Yrs. at this Residence 4 Telephone 785-9082

e of birth 2 (Mo.) 14 (Day) 36 (Yr.) Age 31 U. S. Citizen Yes

List below address of residence for the past five years:

Street and Number	City and Zone	State	From (dates)	to
Youngclove Av	Cohoes,	N.Y		1964
4 Hoffman Dr.	Latham,	N.Y	1964	Present

Education

ucation	Name of School and Location	Years Attended	Date Graduated	Degree or Certificate	Major and Minor Subjects
gh School	Cohoes H.S. Cohoes, N.Y.	4	JUN 1953		
ll. or Univ.	SYRACUSE U. SYRACUSE, N.Y.	4	JUN 1957	B.A.	ECONOMICS
her					

present hobbies, active interest:

ow unemployed, how long? 2 weeks FIRE To Dept Store

ccurate, detail your complete rd of past employment.

Employment Record

Begin with your current or most recent employer and work back chronologically.

NAME AND LOCATION OF COMPANY	SPECIFIC WORK YOU DID	IMMEDIATE SUPERIOR
WALDMANS INC Cohoes, N.Y	RAN Company	None
Bache & Co. New York City	STOCK BROKER, TRAINEE	STANLEY KLIMCZAK MANAGER SYRACUSE OFFICE

r We Communicate with Your Present Employer? ☑ Yes ☐ No If Not, Why?

did you like best PAST Why? SUCCESSFUL

did you like the least Why?

ow, or have you ever been owner or part owner of any of the firms listed as employers? Yes Explain WALDMAN'S INC.

ever been involved in bankruptcy or r ivership proceedings? No Explain

Family and Economic Status

y of the following that applies to you: Single (Married) Separated Widow Engaged Remarried Divorced Widower Date of Divorce or Separation

Name JANE WALDMAN Age 26 Health EXCELL. No. of Children 3 Ages 3, 2, 5 mos

mployed Yes (No) Full time Part time Nature of Work Teacher Avg. Monthly Earnings

e your monthly living expenses $ 800 Do you rent (own) apartment (home) Value $ 25,000 (Home) Encumbrance $ 12,000

d model of auto(s) owned 63' BUICK, 63' VOLKS

ave a valid driver's license? Yes

s your highest yearly income $ / Year

early income do you feel you are capable of earning three years from today? $ 25,000 up

REASON FOR LEAVING	PERIOD OF EMPLOYMENT FROM MONTH YEAR	TO MONTH YEAR	AMOUNT OF EARNINGS START	END
RE	JAN 61	PRESENT	$ 400 Month ☑ salary ☐ commission	$ Month ☑ salary ☐ commission
h IN FAMILY	MAR 1960	Dec, 1960	$ Month ☑ salary ☐ commission	$ Month ☐ salary ☐ commission
			$ Month ☐ salary ☐ commission	$ Month ☐ salary ☐ commission
			$ Month ☐ salary ☐ commission	$ Month ☐ salary ☐ commission
			$ Month ☐ salary ☐ commission	$ Month ☐ salary ☐ commission
			$ Month ☐ salary ☐ commission	$ Month ☐ salary ☐ commission

132a

Insurance

st types and amounts of Life Insurance carried: ~~O~~ 15,000 Endowment?

Physical and Medical Record

eight 6'3 Weight 195 Physical Disability None Present state of health Excell

ow many times in the past five years, and for what periods, have you been unable to work because of illness? NONE

Explain:

this position required some traveling, would this be acceptable? Yes

xplain

we have a position available in another area, would you be willing to relocate?

xplain Yes

Additional Information

What particular assets in experience, personality, or ability do you have that qualifies you for a sales career with this company?

8 VERY SUCCESSFUL YEARS of Retailing
TOOK ANTIQUATED BUSINESS, IN dead town
REVITALIZED IT - DOUBLED VOLUME AND PROFIT MARGIN
)

I hereby certify that all statements made in this application for employment are true and correct to the best of my knowledge and belief.

Date Jan 9 19 68 Melvin R Woodson
(Signature)

CHEMSEARCH

Dallas • St. Louis • New York • Los Angeles
Toronto • London • Paris • Mexico City

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, INC., A Texas Corporation,

Plaintiff,

CIVIL ACTION
NO. 75-CV-170

- against -

AFFIDAVIT

MELVIN R. WALDMAN and MELVIN R. WALDMAN,
d/b/a DYNACHEM,

Defendants.

STATE OF NEW YORK:
COUNTY OF ALBANY : ss.:

NORMAN STEINMAN, being first duly sworn, says:

1. That he is a Division Manager of National Chemsearch, a division of USAchem, Inc., plaintiff herein.

2. As Division Manager my responsibilities are to supervise sales managers, train management trainees, supervise salesmen and perform other services in connection with the group of sales personnel which I am in charge of in the thirteen eastern states, including the State of New York.

3. I originally hired and trained defendant Waldman in 1968. Defendant Waldman received initial training, follow-up training, supervisory assistance and attended three sales meetings each year during his entire employment. This training enabled

defendant Waldman to become a very successful chemical specialties salesman. At the time of his employment he was earning approximately $800.00 per month. During the year 1974, the last full year of his employment he earned $66,625.00 on sales of $210,803.00. Waldman was trained to and did develop a personal rapport with the customers he was soliciting for National Chemsearch. He became knowledgeable of the buying habits, product needs and intervals of time each account would purchase. He was trained to and did learn to solve problems which the accounts had and furnished National Chemsearch products to meet these needs.

4. At the time of his employment he signed a Sales Representatives Agreement which contained a post-employments covenants restricting his sales activities in his assigned territory for a period of 18 months after termination. Furthermore, it restricted Waldman from divulging or using confidential customer information. He expressed no reluctance in signing the agreement. In 1970 he executed an additional agreement called a District Sales Manager's Agreement which also contained a post-employment restriction on his sales activities. Pursuant to said agreement he trained other salesmen in and out of his assigned territory for which he received an override on their sales as agreed upon. In 1972 Waldman's Sales Representatives

Agreement was amended by adding additional territory as requested by Waldman. Several times during his employment, Waldman was offered a sales management position but he refused to relocate or give up his lucrative accounts.

5. National Chemsearch made a substantial investment in interviewing, hiring, training and follow-up training Waldman. In addition to in-the-field, supervisory and sales meeting training, Waldman received a great deal of material from National Chemsearch including Sales Presentation Book and replacements, containing technical product information for approximately 300 products (copyrighted) illustrating the products, their uses and type of accounts which would need such products; basic product manual, containing detailed explanations of the most basic and highly used products with emphasis on type of account to call on for each product, and, how to demonstrate and sell the product; demonstration kits; samples; sprayers and other applicators; sales letters; product guides on new products; testimonials; order pads; Daily Analysis Sheets; price lists and revised price lists; commission lists and revised commission lists; and a customer list giving names, addresses, prior purchases of accounts including date of purchase, amounts paid, products purchased and prices paid. Waldman also had available visual aids designed

to visually demonstrate the manner certain National Chemsearch products could solve problems which might be encountered by an industrial, manufacturing, institutional and/or municipal account. Waldman was not an ordinary door-to-door salesman, but a highly trained, highly motivated technical sales representative trained to solicit, demonstrate and sell some 300 products developed to solve highly technical problems and meet needs of hundreds of varied industrial, manufacturing, institutional, and municipal accounts in his assigned territory.

6. Because of the investment National Chemsearch makes in its sales representatives and because National Chemsearch trains its salesmen to develop a close personal relationship with the accounts, the salesman develops a special influence with the purchasing agents for those accounts. Because of this it requires each sales representative to sign an agreement which contains a post-employment covenants not to compete in order to give National Chemsearch an opportunity to interview, hire, train a salesman and give that salesman an opportunity to continue and retain the customer relationship that existed at the time of termination of the former salesman serving its account(s) in that area. It has been National Chemsearch's experience that this takes eighteen months from termination or eighteen months from when former salesman quit soliciting and selling to said

accounts in his former territory to attempt to reestablish its customer relationship with its accounts. This is clearly illustrated by the facts in this case. I am advised that defendant Waldman, since his resignation on February 3, 1975, has sold $34,870.00 worth of competitive products of which $32,334.00 have been sold to his former accounts. The two salesmen hired by National Chemsearch to replace Waldman have since defendant Waldman's resignation sold only about $10,000.00 worth of chemical specialty products, a great number of which have been to customers not previously sold by National Chemsearch because of Waldman's special influence with its existing customers. The cost of hiring trained and supported such new salesmen is calculable by cost accounting, but the loss of salesmen and the loss of sales to National Chemsearch customers in Waldman's former territory is not subject to calculation. National Chemsearch may never regain the customers formerly sold by National Chemsearch through Waldman unless given an opportunity to redevelop a customer relationship free of the special influence exercised by Waldman for 7 years. Unless defendant is enjoined by selling the approximately 350 accounts he serviced for National Chemsearch, National will continue to suffer damages.

7. Waldman by reason of his training, knowledge of customers' needs and problems rendered special and unique services for N ational Chemsearch.

Norman Steinman

Sworn to before me this

2nd day of June, 1975

Notary public, State of New York
My Commission Expires 3/30/76

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, Inc., a Texas Corporation,

Plaintiff

-against-

MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a Dynachem

Defendants.

Civil Action No. 75-CV-170

AFFIDAVIT IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

State of New York)
County of Albany) ss:

Melvin R. Waldman, being duly sworn, deposes and says:

1. I am the defendant in the above entitled action.

2. I make this affidavit in opposition to the plaintiff's motion for a preliminary injunction.

3. In the interest of clarity and of organizing a rather wideranging and complex factual situation, I shall divide this affidavit into four major sections, each containing sub-sections: a) the harm which will be done to me if the injunction is granted; b) the lack of harm which will be done to plaintiff if the injunction is not granted; c) the likelihood that I will prevail at the trial of the case; d) and the fact that the public interest will be better served by the denial of the motion.

A.

HARM TO DEFENDANT

4. (a) My Background: I am 39 years old. I was born in Troy, New York and was raised and educated in Cohoes, New York. I graduated from Cohoes High School in 1953 and thereafter, I entered Syracuse University. I received a BA degree in Economics in 1957. I attended Syracuse Law School for one year and then entered the Army. I was discharged as a 1st Lieutenant. I became a stockbroker trainee with Bache & Co. in Syracuse but I had to leave after four months because my father was terminally ill. I returned to Cohoes and worked for my mother in the family business - Waldman's Inc., a retail clothing store. I ran the store with my mother for seven years until a fire, in late 1967, destroyed the entire business. At this time I was married and had three children. Today I have five children ranging in age from 2 1/2 to 10 1/2 years. I was in desperate need of a job and I began answering advertisements in the local papers for employment.

(b) Hiring By National Chemsearch: One of the newspaper ads I answered was for a company called National Chemsearch. The ad did not describe the business or the type of job and I had never heard of the company. I wrote a short letter and sent a resume to a New York City address listed in the ad. Several days later I received a phone call from Norman Steinman of Nation Chemsearch. He told me he would be coming to Albany

and we arranged an interview at the Howard Johnson's Motel. I asked him about the job and the type of company and he said that National Chemsearch was a large company which manufactured and sold chemicals. He said nothing more. A day or two later, in early January 1968, I met Mr. Steinman at the motel in Albany. During our discussion, which lasted about an hour, I repeatedly asked Mr. Steinman about the nature of the job offered in the ad and about the company. He responded in generalities and told me only that it was a very large international company and that it was listed on the New York Stock Exchange. I told him that I was looking for a position in management and he said that the job could definitely lead to a management position and that the company's entire management came from its sales force. I learned for the first time that the job entailed some form of selling. At the conclusion of our interview, he gave me an application form and asked me to fill it out and bring it to him the next day. The following day, January 9, 1968, I met Mr. Steinman again and gave him the application (attached hereto and marked Exhibit "A"). He asked me questions about my background. I repeatedly asked about the job and about my desire to enter a management career. He was vague about the job and encouraging about the management career. Upon leaving this second interview, I was advised by Mr. Steinman that he would be in touch with me. He called me on the phone within

the next day or two and asked me to come to New York City on January 19, 1968, for a third interview.

I went to New York on the 19th and met Mr. Steinman and a Mr. Greenfield. They each asked me question for about an hour. I asked about the job and was told that it involved selling "specialty chemicals." I was rapidly losing interest in the job when they asked me to leave the room. Several minutes passed and I was invited back into the room. Mr. Steinman extended his hand and said "Congratulations, you have the job." I still wanted to know "what job?"

Mr. Steinman handed me a pen and pointed to a document which he asked me to sign. He said it was a salesman's contract, "a mere formality," and that everybody in the company had to sign one.

At his deposition, Mr. Steinman described in detail the high pressure "highlighting" tactics used to induce the signing of the contract. He went through his sales pitch and this is some of what he said:

> "Mel, let's just go over this Agreement. What we have here is a Sales Representative Agreement, which I don't know if you are familiar with or not. It is a pretty standard Agreement. There are some things in here that I would like to point out to you. If you would like to, I would be only to happy to put you into an office, let you sit down and go over this from stem to stern." At which point the man usually says "No, that's o.k." Then I say, "All right, let me point out a few things to you. The top part here is just as it says: this Agreement has been made and entered into the 19th day of January, 1968, between National Chemsearch Corporation and Melvin R. Waldman, hereinafter referred to as a Rep . . . . Paragraph 3 pretty well outlines just what you are going to be doing, that

is, the sales of various maintenance products. Paragraph 4 is kinda important. Now let me go a little negative here, which I don't like to do, but let's be realistic. In the event that we terminate our relationship for any reason whatsoever, Mel, on your part or on our part, the representative expressly covenants and agrees that during the term of his employment by the Company and for a period of 18 months, immediately following the expiration or termination . . . He will not sell the same type of products for anyone else in the territories listed below in the State of New York: Albany, Greene and Schoharie Counties. So what that simply means is that you can go anyplace else in the world. You can go off anywhere where you are't selling for us, but not in the assigned territories. On the next page . . . and most of these really quite honestly are for the benefit of the Company as you can see as you read, it says that you won't in anyway either for yourself . . . there are a bunch of do's and don't's and the next do's and don't's are that you will not divulge in any way to anybody any trade secrets, information or anything along those lines . . . Paragraph 8 is really important . . . What that really means quite simply is that at no time do you moonlight and hold down a second job. Paragraph 9 . . . this Agreement may be terminated at any time by either party without any notice. Being a commission job, you don't have to give us notice and we don't have to give you notice." I believe that is about what I highlighted.

Let me explain this to you in qualification of our Agreement, we don't look to barboozle anybody into signing this. I have had on occasion people who have wanted to take it home, let their attorneys go over it with a fine tooth comb. Basically, it is not company policy to do so. If we are relinquishing confidential matters to a person, that person is going to be in our employ prior to getting them. By the same token the man is not investing any money with us and if he signs that Agreement and one day later, two days later, a week later, or two weeks later, he calls us up and says the contract stinks, I don't like it, and I don't want to work for you, there is nothing binding, that's the end of it. There is nothing that says he has to devote his life to us . . ."

A few comments are in order with respect to Mr. Steinman's presentation. Firt, I never read the contract. Second, as the Court can readily see, Mr. Steinman's rather glib and off hand presentation gave me no real warning of what I was becoming legally bound to. Third, although I requested the opportunity to have a lawyer read the contract and advise me as to its contents, the request was summarily denied as being "against company policy." Fourth, although I strongly requested the right to take the contract home with me and think it over, this request was also summarily denied as being "against company policy."

Far more important than the foregoing, however, there are two material, serious and fraudulent misrepresentations contained in Mr. Steinman's "highlighting" of the contract. Steinman states that if I leave the company's employ, I am only prohibited for 18 months from working in Albany, Greene, and Schoharie Counties. A simple reading of Paragraph "4" of the contract (attached to Plaintiff's Complaint) reveals that I was also prohibited from selling chemicals in "any other territory" and "within the assigned or former assigned territory of such other representative(s)." Had I been able to consult an attorney, I would have known that I was also prohibited from selling chemicals any other place in the entire world since the Company has representatives throughout the

world. Mr. Steinman did not tell me this. He told me something far different. Secondly, Mr. Steinman's presentation of the contract leaves one with the impression, that, if after signing, one becomes disenchanted and wants to cancel out, the company is only too willing to do so without obligation to either party. Not so. The minute I signed that contract, I was restricting my freedom and my life for the next eighteen months.

The contract which I signed had no mutuality whatsoever; it was unconscionable to the point of being repugnant; and it was represented to me to be a "horse of a different color." Can justice be so blind and naive that it would enforce such a contract?

Thereafter, I was given a salesman's "bag" and a pep talk. I never saw nor met Leonard Rosenbaum, who signed the contract for the company. I also signed a compensation agreement giving me a draw against commissions of $200.00 per week.

In February 1968 I spent two and one-half days riding with Richard Goldich in the Springfield, Mass. area. He sold the company's products, which, I learned for the first time were janitorial supplies, and I watched. Thereafter I rode with Harold Segal for two days in the Albany area and later with Norman Steinman for two or three days in the Albany area. I attended a two-day meeting at La Guardia Airport, New York City in late February which was supposedly an orientation

seminar. I learned little or nothing. Other than occasional contacts with Mr. Steinman and sales meetings held three times each year, this was the extent of my "training" by the company.

(c) My Progress with National Chemsearch. According to the Plaintiff's figures (which I have no reason to doubt), I made sales of $111,673.00 in 1969 and commissions of $34,310.00. Despite the fact that I was making an excellent income from the job, I still wanted to be in a management position with the company. Countless times I expressed this desire to Mr. Steinman, my immediate supervisor. In response to these requests, I believe, Mr. Steinman assigned me to "train" new salesmen who would work in other territories. I accepted these assignments and "trained" many new salemen for the company.

In my territory, Albany, Greene and Schoharie Counties, I was the only salesman for National Chemsearch. I soon learned, however, that National Chemsearch had a "sister" company called Certified Laboratories and that both divisions of USAchem, Inc., the parent company and Plaintiff in this action. Certified sold "specialty chemicals" also, which were in fact janitorial supplies identical in all respects to the entire National Chemsearch line of products. Certified had a salesman in my territory and he sold identically priced products in competition with me. I was told by Mr. Steinman never to mention to any of my customers that Certified and National Chemsearch were one and the same company. I was paid the 2% override on their sales at the end of each year. This amounted to between

I persisted in my efforts to obtain a management position with the company and went over Mr. Steinman's head to Hal Kimmel, a Vice President. Finally Mr. Steinman called me to come to New York City on February 1, 1970. I met Mr. Kimmel and Mr. Steinman. I was told that the company was going to put a new salesman in my territory in addition to me. They offered me a position as District Sales Manager which would give me a salary of $200.00 per week, commissions on my sales as before, a group of salesmen under my supervision and a 2% override on the sales of those salesmen whom I supervised. I refused. I did not want another salesman in my territory. Mr. Kimmel left the room and Mr. Steinman explained that I had better take their offer since they were going to put in the new salesman regardless of what I did. He handed me another contract, this one for District Sales Manager. I read it briefly and against any better judgment and under intense pressure, I signed.

Never, From February 1, 1970 until the present time did National Chemsearch ever pay me my $200.00 per week salary (see District Sales Manager Agreement attached to the Complaint and Steinman Deposition Page -). The contract was breached by Plaintiff from its very inception.

It took persistent pressure on my part before the company agreed to hire salesman to be placed under my supervision. Finally, this was done and I was paid the 2% override on their sales at the end of each year. This amounted to between

$3,000 and $4,000.

My employment continued with the Company as a District Sales Manager and my income increased. I worked hard and succeeded in having my territory increased. In 1973 (according to the Company's figures) I made $202,626.00 in sales and $65,879.00 in commissions and override. In 1974, however, certain things happened which convinced me that the company was backing out of their agreements with me and was trying to pay me less for more work on my part.

(d) Termination with National Chemsearch:

The company increased its prices on all its products by an average of 50% during 1974. Although I increased my sales dollar volume slightly, I made fewer sales and each sale became more and more difficult because the products were of a very high price.

Throughout my years with the company, I had "protected accounts." A "protected account" is a new account initiated by the salesman in which a sale is made at least once in every 12 month period. So long as one sale was made during the period, the account was to be protected in the sense that no other company salesman could sell to that account. What I was never told by Mr. Steinman or anyone else in the company and what I learned the hard way was that no account was

protected from salesmen of Certified Laboratories. Indeed, I met constant and repeated competition in my territory, on "protected accounts" from Certified salesmen. My accounts were never "protected," contrary to the company's representations to me. (see Steinman deposition, page_____).

On certain municipal accounts, approximately six, the customers refused to pay freight charges for the shipment of the products. The company took the position that I should pay these charges and that they should be deducted from my commissions. I resisted this and under pressure, Mr. Steinman agreed to pay half of these freight charges. I paid the other half. This continued for several years. Suddenly in early 1974, Mr. Steinman summarily informed me that the company would no longer pay half freight on these accounts. At the end of 1974, Steinman offered to return the half-freight allowance (see Steinman Deposition, page _____.)

During the last few years of my employment with the company, I was given a bonus in the form of a vacation trip. If I did not want to take the trip, I would be given a cash allowance. The value of the trip or cash allowance in lieu thereof was equal to approximately 1% of my gross sales during the preceding year. In 1973, my trip was worth $2,000.00. In 1974, on $8,000.00 higher sales, my trip was worth $1,200.00. .I complained about this and Steinman offered to reinstate the half - freight allowance heretofore mentioned.

During the last year of my employment, 1974, most of the new products introduced by the company carried a lower commission rate than the products I was currently selling.

All of these factors, coming nearly simultaneously, had the cumulative effect of making me very disenchanted with the company. Although I was earning a substantial income, I was working very hard for it and I felt that the company was systematically attempting to deprive me of my just rewards.

The crowning blow came in January 1975. Mr. Steinman informed me that from that time forward, the company would no longer pay me a 2% override on the sales of other salesmen under my training. This, along with the $200.00 per week salary which I was never paid, was the very heart of the District Manager Agreement. The final breach was made by the company. There was nothing left to the District Manager Agreement nothing but covenants which allegedly restricted me from the only form of living which I had known for the last seven years. The company, without warning, unilaterally terminated the position of District Manager and the benefits and remuneration which went with it. (See Steinman Deposition, page_____).

After painful discussions with my wife, during which we considered our finances, our five children, and our other substantial obligations, I decided to leave the company. At the time I had no idea what other job or employment I should [illegible] my total sales were $73,430.00 M

seek. The economy was bad and well paying jobs for someone whose only experience was in selling janitorial supplies were difficult to find. I decided that my only alternative was to attempt to start my own small janitorial supply business. I resigned from the company on February 3, 1975 and filed a Certificate of Conducting Business Under the name of Dyna-Chem Laboratories on that same date.

e) Irreparable Harm Dynachem, a business which is barely four months old, is my only livelihood and the only source of support for my family. Ninety-nine percent of Dynachem's customers are former customers of mine while I was employed by National Chemsearch. Although the Plaintiff appears to be magnanimous in asking this Court to enjoin me only from selling my former customers, the Plaintiff knows full well that such an injunction will effectively put me out of business entirely. In a competitive business such as janitorial supplies, an injunction which cut off my business for even three weeks would be fatal - the customers will simply buy from someone else (National Clemsearch or Certified for example). The harm which such an injunction would bring to me and my family could never be repaired - not by a bond, not by damages and not by an apology.

In the four months of Dynachem's existence, we have made total sales of $33,932.47. During the same period in 1974, for National Chemsearch, my total sales were $73,430.00 My

total profit is approximately $16,000.00 - or less than half of what I was making with National Chemsearch. I am not getting rich, but at least I am my own boss and I can trust myself.

B.

LACK OF HARM TO PLAINTIFF

5. a) Description of Plaintiff corporation. The only way to describe the plaintiff corporation adequately is - enormous and extremely profitable. Attached hereto and made a part hereof and marked Exhibit "B" is a copy of the Standard and Poor's report on National Chemsearch. Also attached hereto, made a part hereof, and marked Exhibit "C" are extracts from the Plaintiff's most recent Annual Report to shareholders. These documents demonstrate conclusively the enormity of the plaintiff. If we project Dynachem's sales on an annual basis based on its first quarter sales we find that the annual sales of Plaintiff are approximately 1500 times those of Dynachem. It boggles the imagination to conceive of how the existence of Dynachem during the pendency of this action will have any effect whatsoever on the plaintiff. At the very least, plaintiff has the substantial burden of showing this harm or effect to this Court.

b) Plaintiff's Efforts in My Former Territory. In paragraph "15" of Plaintiff's Moving affidavit on this motion,

it is alleged that Plaintiff has hired two new salesmen to replace me in my former territory and that between them they had sales of only $1297.00 in a one month period of time. This paragraph is so distorted, misleading and untrue that it calls for substantial rebuttal:

1) Salesman Ed Fawcett one of my two replacements was hired on March 10, 1975. In the month of March 1975, he made sales of $1,181.00. The next month, April 1975, he had sales of $4,808.00.

2) Salesman Waddington, my other replacement, was hired on March 24, 1975 (seven days before the end of the time period set forth in paragraph "15"). In the month of March he, not surprisingly, had only $116.00 in sales. In April, however, he had sales of $4192.00. (The sales records of Fawcett and Waddington for these periods are attached hereto and marked Exhibits "D" and "E" respectively).

3) Plaintiff conveniently forgot to mention that during this same period of time plaintiff's "telephone division" was busy phoning my best customers and making sales over the phone. Between March 10, 1975 and March 19, 1975, by the plaintiff's own records (attached hereto as Exhibit "F") the "telephone division" made $1440.00 in sales. Upon information and belief, an additional $1000.00 of sales were also made to Greendell Packing Company and Cobleskill College, by the telephone division.

4) During this same period of time salesman Wilcove (normally working in an adjoining territory) had sales of $800.00 in my former territory at the very minimum. Despite our request at the deposition, plaintiff did not produce salesman Wilcove's sales records for 1975. I am informed and believe, furthermore, that salesman Wilcove has stated that March 1975 was his highest sales

month in his six years with the company. I believe many of these new sales were made in my former territory and they are not included in plaintiff's paragraph "15".

5) If the foregoing figures (1,2,3 and 4 above) are added together, the sales figure mentioned in plaintiff's paragraph "15" should be amended from $1297.00 to the more realistic amount of $12,240.00. This compares with $38,204.00 in sales which I made for the company in the same period last year. I am sure the plaintiff will complain bitterly that this decrease of $25,965.00 is due entirely to my competition from Dynachem. Not so, as will be shown in the following analysis.

c) Why Did Plaintiff's Sales Decrease? No damages flow to plaintiff merely becuase I left the employ of National Chemsearch. Even under their unfair and uncouscionable contracts, I had the freedom to terminate my employment. Certainly if I had died, retired or moved away, plaintiff would still have had to hire a replacement or replacements and certainly these new men would take time to become experienced and familiar with the territory and certainly their sales would not measure up to those of an experienced salesman. None of this, however, yeilds one cent of damages to the plaintiff. Plaintiff could be damaged only if my allegedly illegal competition caused a substantial and provable diminution in its sales.

In response to our notice of deposition in this case, the plaintiff has produced daily sales analysis sheets for salesman Ed Fawcett, one of my replacements, for the month

of April 1975. (The sheets of salesman Waddington were also demanded and as yet, have not been produced). These Fawcett sheets are fascinating. But even more revealing and more conclusive are 18 separate index cards which were attached to certain of these sales analysis sheets. These cards analyze 59 instances in which this salesman could not make a sale. The cards give the reasons why the sale was not made. All of these cards are reproduced and attached hereto as Exhibit "G". We have tabulated the reasons given by customers for not buying the National Chemsearch products:

REASON	No. of Customers giving this response
Products too expensive	17
Overstocked	15
Satisfied with current product	13
business slow	4
miscellaneous	9
Dynachem Competition	1

In one instance out of 59, was my competition mentioned as being the reason a sale was not made. These cards are vitally important. They are candid comments made by the man actually in the field talking with the customers. They are not wild suppositions by company executives or attorneys made in the course of preparation for this litigation.

During this same time period (April 1975), this same salesman (Fawcett) made a total of 240 calls or sales visits. He made 31 sales. In the 209 instances where he did not

make a sale, there were 151 instances where the customer was out or not available to the salesman. The salesman only got to talk to the owner or other purchasing agent in 89 instances and he made 31 sales or 35% of those he actually had an opportunity to sell. In only one instance in these 240 calls was my name or that of Dynachem mentioned as the reason the sale was not consummated.

The foregoing is clear and conclusive. The existence of Dynachem and its sales had no measurable effect whatever upon the plaintiff's sales. No damage has been done to plaintiff and it must follow, therefore, that no damage will be done in the future to plaintiff. If there is no provable expectancy of substantial future damage, a preliminary injunction cannot be granted.

C.

Defendant Will Succeed On The Merits

6. a) The Facts Favor Defendant. The foregoing facts clearly demonstrate and lead to an overwhelming conclusion - upon a trial of this case, I should prevail. The reasons for this conclusion can be summarized as follows:

1) The contracts upon which plaintiff sues are unreasonable, unconscionable and lack any form of mutuality.

2) Duress and fraudulent misrepresentation were employed by plaintiff in obtaining my signature upon both

contracts.

3) Plaintiff cancelled the Sales Representative agreement in February 1970 and it ceased to exist or be binding.

4) Plaintiff breached the District Managers Agreement from the very outset by never paying me my $200.00 per week salary.

5) Plaintiff unilaterally terminated the District Managers Agreement in January 1975 and withdrew the remaining consideration for that agreement by cancelling the 2% override.

6) Plaintiff has sustained no damage whatsoever by virtue of competition by Dynachem. Plaintiffs own replacement salesman states candidly and in writing that only one sale out of 240 attempts was lost becuase of Dynachem competition.

7) Plaintiff will sustain no damage in the future by virtue of Dynachem competition.

At a trial on the merits plaintiff will receive no award of damages nor will it receive a permanent injunction.

b) The Law Favors Def ndant. An affidavit is not a proper place to argue law, but I am informed by my counsel that USAchem, Inc. v. Goldstein (U.S. Cir. Ct. of Ap., 2nd Cir, 1974) and other cases cited in our brief demonstrate that Plaintiff has a slim chance at best in succeeding on the merits of this case.

D.

THE GRANTING OF AN INJUNCTION WOULD BE CONTRARY TO THE PUBLIC INTEREST

I am informed that the law and courts look with disfavor upon contracts which have as their primary concern the restraint of business competition. If Dynachem is preliminarily restrained from doing business, competition will not only be restrained, but it will be permanently eliminated. Public policy frowns on such a result.

I need not burden the Court with a discourse on the ills of our present economy and on the frightening state of unemployment in our country at this time. I state unequivocally, however, that if a preliminary injunction is granted I will join the ranks of the unemployed. While the plaintiff might applaud this result, I cannot believe that a Court would consciously and gratuitously order it.

WHEREFORE, Deponent respectfully requests an order of this Court denying plaintiff's motion for a preliminary injunction in all respects, together with such other, further and different relief as to this Court seems just and proper.

/s/ Melvin R. Waldman

Melvin R. Waldman

Sworn to before me
this 31st day of May, 1975.

/s/ Neal W. Rowden

Exhibit "A" reproduced as Exhibit #1 annexed to Affidavit in Support of Motion by Michael G. Breslin, dated June 2, 1975 on page 129a of this Appendix.

EXHIBIT "B"

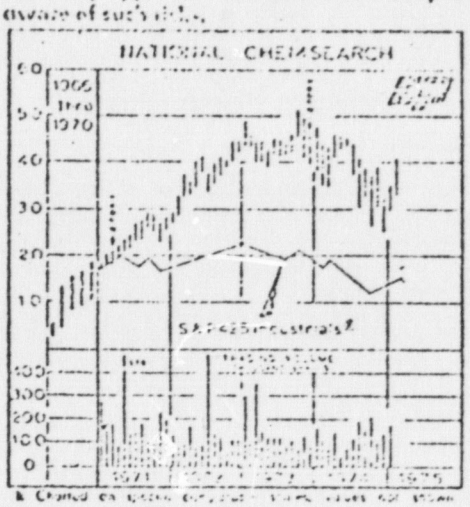
NCH

National Chemsearch

1592

Stock—	Price Mar. 4'75	Dividend	Yield
COMMON	41½	$0.28	0.7%

BACKGROUND: This company makes cleaning chemicals, sanitation and turf management chemicals, maintenance chemicals, and numerous other chemical specialties. An outstanding growth record has been achieved through the specialized nature of the product line and a well-established marketing organization. While further growth is in prospect, the richly appraised shares could be subject to downside corrections and investors should be aware of such risks.



SALES (Million $)

Quarter:	1974-5	1973-4	1972-3	1971-2
July	42.56	30.53	24.43	20.32
Oct.	41.74	30.82	24.43	19.94
Jan.	41.73	34.19	25.13	19.75
April		38.65	29.10	22.58

Sales for the nine months ended January 31, 1975, were up 38% from those of the corresponding year-earlier period. The improvement reflected strong demand, selling price increases, introduction of new product formulations, and an expanded sales force. Raw materials shortages eased significantly during the second quarter, ending by the close of the period. A reduced rate of growth in the third quarter primarily reflected the unusually strong performance in the year-earlier period. Margins were well maintained, as higher raw materials and other costs were offset by the selling price boosts and operating efficiencies. Pretax income advanced 31.4%. After taxes at 49.4%, versus 49.2%, net income rose 30.8%. Share earnings were $1.03, compared with $0.79.

$COMMON SHARE EARNINGS ($)

Quarter:	1974-5	1973-4	1972-3	1971-2
July	0.37	0.27	0.22	0.18
Oct.	0.38	0.29	0.22	0.16
Jan.	0.28	0.23	0.16	0.12
April		0.37	0.28	0.22

PROSPECTS

Near Term—Sales for the fiscal year to April 30, 1975, are placed about 27% above the $134.2 million of the preceding year. Earnings should approximate $1.45 a share, compared with $1.16.

Another sales gain is anticipated for 1975-6. The improvement would primarily reflect greater market penetration of new products and an expanded sales force. Higher selling prices will be somewhat of a factor in the first half.

Margins are expected to be maintained, as operating efficiencies and the higher prices should offset increased raw materials, selling and other costs. Earnings for 1975-6 are likely to post another advance. Dividends are expected to continue at a minimum of $0.07 quarterly.

Long Term—Despite intensified competition, the well established position in specialty chemicals and aggressive marketing policies should foster continued growth.

RECENT DEVELOPMENTS

A new $3.5 million headquarters building has been completed. The new offices have enabled NCH to consolidate its management and staff operations.

Capital expenditures for 1974-5 are estimated at approximately $5 million, and a similar level is anticipated for 1975-6. Construction projects are under way in Indianapolis, Philadelphia and the Dallas area.

DIVIDEND DATA

Payments in the past 12 months were:

Amt. of Dividend $	Date Declared	Ex-dividend Date	Stock of Record	Payment Date
0.07...	May 6	May 24	May 31	Jun. 14'74
0.07...	Jul. 16	Aug. 26	Sep. 2	Sep. 16'74
0.07...	Nov. 4	Nov. 25	Dec. 2	Dec. 16'74
0.07...	Feb. 3	Feb. 24	Feb. 28	Mar. 14'75

¹Listed N.Y.S.E. ²Indicated rate. ³On comb. & class B com. shs. prior to 1972. Adj. for 2 for-1 split in Dec. 1973.

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Vol. 42, No. 47 Monday, March 10, 1975 Sec. 20

Exhibit "B"

INCOME STATISTICS (Million $) AND PER SHARE ($) DATA

Year Ended Apr. 30	Net Sales	% Oper Inc of Sales	Oper Inc	Depr & Amort	Net bef Taxes	Net Inc	Earns	Common Share ($) Data — Div Paid	Price Range	Price Earns Ratio HI LO
1974--	-----	---	-----	---	-----	----	---	0.28	47⅛-25⅝	---- -
1973 -	134.19	20.7	27.69	1.43	25.31	13.52	1.15	0.25⅛	51 - 33⅛	44-29
1972--	103.07	20.1	20.69	1.61	20.03	10.35	0.93	0.1563	44⅝-27⅛	31-21
1971--	82.19	20.3	16.70	1.02	15.70	8.07	0.70	0.15	29⅛-16⅝	42-22
1970--	69.41	18.6	13.12	0.75	12.39	6.57	0.57	0.12½	18 -10⅝	32-18
1969--	56.73	19.7	11.58	0.53	11.32	5.58	0.49	0.12½	16⅝- 9¼	34-19
1968--	48.39	20.9	10.15	0.32	10.03	4.85	0.43	0.12½	15⅛- 8⅝	37-21
1967 -	42.12	20.5	8.65	0.25	8.41	4.33	0.36	0.12	13⅝ - 4⅜	39 11
1966	32.91	21.6	7.10	0.24	7.02	3.70	0.33	0.10	4⅝ - 2¾	14 - 8
1965	24.96	18.6	4.63	0.24	4.49	2.43	0.22	0.05	3⅛ - 3⅛	16 14
1964	19.70	18.8	3.70	0.17	3.55	1.87	0.17	0.004	---------	

PERTINENT BALANCE SHEET STATISTICS (Million $)

Apr. 30	Gross Prop	Net Capital Expend	Cash Items	Inven tories	Receiv ables	Current Assets	Current Liabs.	Net Workg Cap	Cur Ratio Assets to Liab.	Long Term Debt	Pfd Book Val Com Sh
1973--	22.21	4.40	12.12	15.14	23.34	66.52	20.81	45.71	3.2-1	0.84	5.03
1972--	17.61	4.52	16.50	9.25	25.20	51.71	15.45	36.32	3.4-1	0.69	4.13
1971--	13.08	1.45	12.82	7.31	12.57	39.18	9.22	29.96	4.2-1	0.53	3.38
1970--	11.64	2.04	7.57	6.52	15.16	29.77	7.04	22.73	4.2-1	0.59	2.75
1969--	9.56	2.77	4.94	5.75	12.67	23.90	6.16	17.74	3.9-1	0.16	2.75
1968--	7.78	0.47	5.41	5.17	10.54	21.44	5.55	15.89	3.9-1	0.60	1.81
1967--	6.32	1.02	3.82	3.74	8.14	16.05	4.07	11.98	3.9-1	0.75	1.43
1966--	5.23	1.26	2.97	3.05	6.15	12.32	3.94	8.38	3.1-1	0.50	1.11
1965--	3.97	1.19	2.16	2.18	4.31	8.75	2.65	6.10	3.3-1	0.34	0.75
1964--	2.78	0.67	2.89	1.31	3.39	7.65	2.73	5.47	3.4-1	0.38	0.60

[1]Data for 1973 as originally reported; data for each yr. prior to 1973 as taken from subsequent yr.'s Annual Report; incl. PZM Mfg. Co. eff. 1967. [2]Of fall out yr. [3]On com'n. com. & el. basis prior to 1972. [4]Adj. for recap. in 1964-5 & 2-for-1 splits Dec. 1973, Mar. 1971 & Aug. 1967. [5]Bef. spec. chge. of $0.02 a sh. in 1971. [6]Cal. yrs.

Fundamental Position

National Chemsearch and its subsidiaries principally formulate, produce and market about 300 chemical specialties. These products are for cleaning (53% of calendar 1973 sales), sanitation and turf management (19%), maintenance, lubrication and corrosion control, construction, industrial water treatment and industrial and municipal sewage, and miscellaneous purposes. In 1973-4 41.6% of sales were foreign, and 38.9% of net income was derived from foreign operations.

Cleaning chemicals consist of detergents, degreasers, soaps and abrasives employed to clean engines and motors, remove tar from machinery, clean printing presses, wash dishes and various other uses. Sanitation and turf management chemicals include insecticides, germicides, chemicals for staphylococcus control and surgical soaps.

Maintenance chemicals are mostly waxes, paints and sealers, and bonding agents. Miscellaneous chemical specialties are coolants, fuel oil additives, fabric softeners, and specialty lubricants.

Raw materials are purchased from at least 200 suppliers. These items are mostly raw chemicals, but also include steel and plastic containers, applicators, sprayers, floor machines, and a few finished chemical products. In 1973-4, some of these raw materials were in short supply, forcing reformulation of certain products. Since then, however, the shortages have ended.

NCH is also engaged in marketing replacement fastener products to the maintenance industry, replacement plumbing parts to industry and the plumbing trade, computer software processing and services, and welding supplies and equipment.

Sales are made by company salespeople through direct solicitation. Customers number about 250,000.

Cash dividends, paid since 1964, totaled 21% of earnings in the five years through 1973-4.

Employees: 4,014. Shareholders: 1,814.

Finances

Capitalization as of October 31, 1974, was 1.2% long-term debt, 0.6% minority interest, and 98.2% equity.

All 2,016,407 shares of the class B common stock were converted into common stock on a share-for-share basis on May 3, 1972. The class B shares did not receive any dividends; hence, total dividend payments rose sharply in 1972-3.

Inventories of raw materials, sales supplies, and purchased finished goods are stated at a moving average cost which approximates cost on a FIFO basis and is not in excess of market. During 1973-4, raw materials stocks were increased as a hedge against rising prices and localized shortages. Those unusually high inventory levels have since been reduced.

CAPITALIZATION

LONG TERM DEBT: $811,209.
MINORITY INTEREST: $393,958.
COMMON STOCK: 11,655,613 shs. ($1 par); some 51% owned by the Levy family.

Incorporated in Delaware in 1956. Office—2727 Chemsearch Blvd., Irving, Texas 75062. Pres—I. I. Levy. Secy—J. H. Stone. Treas—M. P. Levy Jr. Dirs—I. A. Levy (Chmn.), M. Goldstein, I. I. Levy, M. P. Levy Jr., R. J. Polley, S. H. Stewart III. Transfer Agents—Republic National Bank, Dallas; First National City Bank, NYC. Registrars—First National Bank, Dallas; Manufacturers Hanover Trust Co., NYC.

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FACING AND COVER: Interior and Exterior views of the Company's International Head-

NATIONAL CHEMSEARCH CORPORATION and SUBSIDIARIES

the year at a glance

YEARS ENDED APRIL 30, 1974 and 1973

	1974	1973
Net Sales	$134,194,647	$103,036,291
Net Income	$ 13,515,011	$ 10,250,243
Earnings Per Share	$1.16	$.88*
Average Number of Shares Outstanding	11,638,941	11,597,244*
Total Assets	$ 87,724,717	$ 68,284,240
Working Capital	$ 45,709,930	$ 36,316,765
Net Capital Expenditures During Year	$ 4,597,867	$ 4,524,635
Long-Term Indebtedness	$ 841,209	$ 698,221
Stockholders' Equity	$ 59,677,712	$ 48,476,361
Number of Employees	4,044	3,350

*Adjusted to reflect two-for-one stock split.

162a
EXHIBIT "C"
Exhibit "C"

to the shareholders:

Your Company set new records for sales and earnings during the fiscal year ended April 30, 1974.

Sales for the year ending April 30, 1974 were $134 million, an increase of 30% over the $103 million reported in 1973.

Net Income amounted to $13.52 million ($1.16 per share), increasing 32% from the previous year's reported Net Income of $10.25 million ($ .88 per share).

The past year offered many new challenges. During a period of rapid growth your Company successfully dealt with problems related to the energy crisis, rapid inflation and shortages of many raw materials. These problems were handled without major disruptions to the sales organization, production or profits.

Raw material shortages and increasing costs presented a particular challenge to our purchasing and inventory control people. Your Company was able to capitalize on the good supplier relations which had been developed in prior years. The Company's customers and sales representatives gained new confidence in the Company's ability to make on-time delivery of quality products under difficult circumstances.

Larger stocks of raw materials are being maintained as a hedge against rising prices and localized shortages. The strong financial condition of your Company throughout the world makes this action possible.

In all markets, costs are constantly monitored. To the extent permitted by local controls and regulations, prices are adjusted. These adjustments are no greater than are necessary to maintain historical profit margins and to provide the cash flow for continued growth and expansion of services.

The chemical specialties sales organizations, Certified Laboratories, National Chemsearch, Mantek and Kernite continued to make worthwhile progress during the year. The sales organization as well as the Sales Management group were expanded. Internal sales support systems and services were increased and improved. These activities included a larger and more effective Marketing Support Group, development of more Audio-Visual teaching and sales aids, and expanded technical assistance to the Sales Representatives. Chemical specialty results were aided by a flow of new products from the laboratory and the development of new formulations which substituted more readily available raw materials for those which were in short supply.

The Company's operations in Western Europe, Latin America, Canada, and the Far East progressed during the year. These areas have expanded under the experienced management team that has been developed over a number of years, and your Company's plan includes continued expansion of its international operations.

The non-chemical maintenance specialty organizations also continued to grow. Power Systems and the plumbing specialty businesses of Creed and P & M were joined by a new welding specialty company, X-Ergon. Each of these groups is in a period of accelerated development. The Company's knowledge of direct selling and of the needs of the maintenance market should help these organizations reach their goals. A 62,000 square foot distribution center in Irving has been completed to support these operations.

During the year the International Headquarters building in Irving was completed. Ground was broken for an additional chemical specialties plant in Indianapolis, Indiana, with completion expected late this fall. Construction of a new warehouse and administrative facility for Creed Company near Philadelphia, Pennsylvania is near completion. In addition, a new plant in the Dallas area is being constructed for Power Systems to enlarge the Company's capacity for producing equipment for application of chemicals.

The space previously used for offices at the main plant in Irving is being refurbished to enlarge the research and development laboratories. When the laboratory construction is completed, the Company's chemists will work in a more modern environment. New and improved products created in the laboratory continue to help solve customer maintenance problems and stimulate the enthusiasm of members of the sales organization.

An additional computer has been ordered for July installation. A new computer system has enabled the Company to centralize its domestic sales order processing in the Irving offices. This additional equipment will provide a backup for the order entry system in addition to providing capacity for expansion.

The cost of all of these capital expenditures is being paid out of internally generated funds and no additional long term debt is contemplated.

The Directors voted in May to increase the amount of the regular quarterly dividend from 6¢ a share to 7¢ a share. This is the fourth increase in the dividend rate since the Company became publicly held in 1965 and the third in the last eighteen months.

• • • • •

As we reflect upon the history of your Company, and particularly the results of the last twelve months, we are more than ever convinced that the quality of the people involved has made the difference. Their ability and initiative should continue to provide the kind of service to our customers that is expected of National Chemsearch. To them we would like to express our appreciation for a job well done.

President

NATIONAL CHEMSEARCH CORPORATION and SUBSIDIARIES

14 YEAR REVIEW

YEARS ENDED APRIL 30,

	1974	1973	1972	1971	1970
OPERATING RESULTS:					
Net sales	$134,194,647	$103,086,291	$82,190,947	$69,410,553	$58,726,208
Net income	$ 13,515,011	$ 10,250,243	$ 7,913,291 (b)	$ 6,568,335	$ 5,578,674
As percent of net sales	10.1%	9.9%	9.6%	9.5%	9.5%
Earnings per share (a)	$1.16	$ .88	$ .69 (b)	$ .57	$ .49
Average number of shares outstanding (a)	11,636,941	11,597,244	11,550,168	11,515,500	11,481,504
CASH DIVIDENDS PAID	$ 2,764,169	$ 1,849,178	$ 1,118,768	$ 910,507	$ 789,906
EARNINGS RETAINED IN BUSINESS	$ 10,750,842	$ 8,401,065	$ 6,794,523	$ 5,655,828	$ 4,788,768
CAPITALIZATION:					
Long-term debt	$ 841,209	$ 688,221	$ 525,715	$ 587,098	$ 158,016
Stockholders' equity	59,677,712	48,476,361	39,510,443	32,059,497	26,257,437
Total	$ 60,518,921	$ 49,164,582	$40,036,158	$32,646,595	$26,415,453
WORKING CAPITAL:					
Current assets	$ 66,522,009	$ 51,714,222	$39,178,277	$29,773,913	$23,895,116
Less — current liabilities	20,812,079	15,397,457	9,218,923	7,041,941	6,157,597
Working capital	$ 45,709,930	$ 36,316,765	$29,959,354	$22,731,972	$17,737,519
Current ratio	3.2 to 1	3.4 to 1	4.2 to 1	4.2 to 1	3.9 to 1
PROPERTY, PLANT AND EQUIPMENT:					
Net additions during year	$ 4,597,867	$ 4,524,685	$ 1,445,623	$ 2,081,365	$ 2,772,301
Total cost at year end	$ 22,205,385	$ 17,607,518	$13,082,833	$11,637,210	$ 9,555,825
Cost at year end, net of accumulated depreciation	$ 16,806,149	$ 13,259,349	$ 9,614,302	$ 8,932,262	$ 7,544,103

(a) Adjusted to give retroactive effect to common stock splits.
(b) After net extraordinary charge of $160,343 ($.01 per share).

NATIONAL CHEMSEARCH CORPORATION and SUBSIDIARIES

consolidated balance sheet

APRIL 30, 1974 and 1973

	1974	1973
ASSETS		
CURRENT ASSETS		
Cash	$ 8,526,155	$ 8,864,327
Time deposits and commercial paper	8,645,878	7,635,920
Accounts and notes receivable (less allowance for doubtful accounts $4,067,351 and $3,162,820)	33,337,443	25,200,225
Inventories	15,138,560	9,254,821
Prepaid expenses	873,973	658,039
TOTAL CURRENT ASSETS	66,522,009	51,714,222
INVESTMENTS AND ADVANCES		
Unconsolidated foreign subsidiaries	962,672	639,871
Other, at cost	321,993	265,347
	1,284,665	905,218
PROPERTY, PLANT AND EQUIPMENT		
Land	2,607,190	2,607,190
Buildings	11,448,984	8,820,788
Equipment	8,149,211	6,179,540
	22,205,385	17,607,518
Accumulated depreciation	5,399,236	4,348,169
	16,806,149	13,259,349
INTANGIBLE AND OTHER ASSETS		
Excess of cost of investment over equity in net assets of subsidiaries, less amortization	435,639	536,390
Deferred income tax benefits	2,180,244	1,335,918
Other	496,011	503,143
	3,111,894	2,405,451
TOTAL	$87,724,717	$68,284,240

PAGE 42

Corporate Information

GENERAL OFFICES	2727 Chemsearch Boulevard Irving, Texas 75062
MAILING ADDRESS	P. O. Box 2170, Irving, Texas 75060
SALES OFFICES	Hackensack, New Jersey Beverly Hills ,California St. Louis, Missouri Toronto, Ontario Principal Cities in Latin America, Europe and the Far East
TRANSFER AGENTS	Republic National Bank of Dallas First National City Bank, New York
REGISTRARS	First National Bank in Dallas Manufacturers Hanover Trust Company, New York
AUDITORS	Main Lafrentz & Co.

Chemical Specialties Divisions of USAchem, Inc.
- Certified Laboratories
- Kernite
- Mantek
- National Chemsearch

Maintenance Specialties — Non Chemical
- Creed Company
- Dyna Systems, Inc.
- P and M Manufacturing Company
- X-Ergon Corporation

Computer Service Subsidiaries
- Systems General Corporation
- Membership Services, Inc.

EXHIBIT "D"

SALESMANS STATISTIC

E R FAWCETT — D KRAMER — BEG DR/CR BAL
38.2C 04/75 — SF NATL-EASTERN — BEG SALES C/O

		CURRENT YEAR MONTH		CURRENT YEAR Y-T-D		PRIOR YEAR Y-T-D	Y-
10	GROSS BILLINGS	2,650		2,972			
11	RETURNS & % TO GROSS	48-	1.8	48-	1.6		
12	NUMBER OF RETURNS		1		1		
13	NET BILLINGS	2,602		2,924			
15	GROSS COMM & % TO GR BILL	827	31.2	936	31.4		
16	RETURN COMMISSIONS & FRT	16-		16-			
17	NET COMM & % TO NET BILL	811	31.1	920	31.4		
23	FRT PREPAID & % TO NET	11-	.4	11-	.3		
25	EQUIP. CHARGES & % TO NET	35-	1.3	49-	1.6		
27	DEL CHG/CR NET & % TO NET						
29	NET EARN & % TO NET BILL	765	29.4	860	29.4		
31	CURR STMT DR BAL INC/DEC-	267	10.2	732	25.0		
36	TOT COMP & % TO NET BILL	1,032	39.6	1,592	54.4		
40	SALES LESS CANCELLATIONS	4,808		5,989			
41	SALES CARRY OVER			3,016			
42	CURRENT DR/CR BALANCE			732			
43	ADV ITEMS & % TO SALES	30	.6	191	3.1		
45	DEL BAL & % TO AVG SALES						
55	CURRENT DRAW/SALARY	04/75 200					
56	EXTRA DRAWS						

DAYS TRAINED * 04/75 - 6* 03/75 - 4*

	TOT-ORDERS CURR	TOT-ORDERS PREV	NEW-ACCTS CURR	NEW-ACCTS PREV	MULT-ORDR CURR	MULT-ORDR PREV	TOTAL-SALES CURR	TOTAL-SALES PREV	NO FUT	FUTURE-SALES CURR	FUTURE-SALES PREV
JAN											
FEB											
MAR	8		8		2		1,181		1	256	
1-QTR	8		8		2		1,181		1	256	
APR	31		18		6		4,808		7	1,680	
MAY											
JUN											
2-QTR	31		18		6		4,808		7	1,680	
JUL											
AUG											
SEP											
3-QTR											
OCT											
NOV											
DEC											
4-QTR											
Y-T-D TOTAL	39		26		8		5,989		8	1,936	

Exhibit "D"

EXHIBIT "E"

SALESMANS STATIS

D G WASDINGTON
3890 04/75

M FELDMAN
5G NATL EASTERN

BEG DR/CR BAL
BEG SALES C/O

		CURRENT YEAR MONTH		CURRENT YEAR Y-T-D		PRIOR YEAR Y-T-D
10	GROSS BILLINGS	2,900		2,900		
11	RETURNS & % TO GROSS					
12	NUMBER OF RETURNS					
13	NET BILLINGS	2,900		2,900		
15	GROSS COMM & % TO GR BILL	938	32.3	938	32.3	
16	RETURN COMMISSIONS & FRT					
17	NET COMM & % TO NET BILL	938	32.3	938	32.3	
23	FRT PREPAID & % TO NET					
25	EQUIP. CHARGES & % TO NET	88-	3.0	88-	3.0	
27	DEL CHG/CR NET & % TO NET					
29	NET EARN & % TO NET BILL	850	29.3	850	29.3	
31	CURR STMT DR BAL INC/DEC-	749	25.8	749	25.8	
36	TOT COMP & % TO NET BILL	1,599	55.1	1,599	55.1	
40	SALES LESS CANCELLATIONS	4,192		4,308		
41	SALES CARRY OVER			1,407		
42	CURRENT DR/CR BALANCE			749		
43	ADV ITEMS & % TO SALES	350	8.3	350	8.1	
45	DEL BAL & % TO AVG SALES					
55	CURRENT DRAW/SALARY	04/75 250				
56	EXTRA DRAWS					

DAYS TRAINED * 04/75 - 7*

	TOT-ORDERS CURR	TOT-ORDERS PREV	NEW-ACCTS CURR	NEW-ACCTS PREV	MULT-ORDR CURR	MULT-ORDR PREV	TOTAL-SALES CURR	TOTAL-SALES PREV	NO FUT	FUTURE-SAL CURR	FUTURE-SAL PR
JAN											
FEB											
MAR	2		2				116				
1-QTR	2		2				116				
APR	39		13		10		4,192		8	1,223	
MAY											
JUN											
2-QTR	39		13		10		4,192		8	1,223	
JUL											
AUG											
SEP											
3-QTR											
OCT											
NOV											
DEC											
4-QTR											
Y-T-D TOTAL	41		15		10		4,308		8	1,223	

Exhibit "E"

EXHIBIT "F". 169a

Exhibit "F"

170a

CHEMSEARCH ☐ P. O. Box 2170 – Irving, Texas 75060 ☐ P. O. Box 25 – Monmouth Junction, New Jersey 08852
☐ 227 So. Central Ave. – St. Louis, Missouri 63105 ☐ P. O. Box 614 – Honolulu, Hawaii 96809
☐ P. O. Box 1294 – Sunnyvale, California 94088

SALESMAN'S COPY DATE 2-12-71

CUSTOMER NO.	CUSTOMER P. O. NO.	SALESMAN CODE	SALESMAN NAME	VIA	SALESMAN ORDER NO.
D20427AY	6F50	978	GERSTELL		207

NAME	HAUGHTON ELEVATOR			TERMS NET 10 DAYS
ADDRESS	815 CENTRAL Ave		ORDER STATUS	FUTURE SHIP FUTURE BILL
CITY & STATE	ALBANY NY	ZIP CODE 12205	F.O.B.	
	MR RATCLIFFE		NEW ACCOUNT YES ☐ NO ☐	

CITY	PUBLIC	ST.	FLAGS	SALESMAN	AIC	TELEPHONE	ZONE	CARR 1	CARR 2

PUBLIC	ST.	CITY	NAME	PLT	PA	CUSTOMER NUMBER

NAME			TAXABLE YES ☐ NO ☐	
ADDRESS OF	MR RATCLIFFE Same		IF EXEMPT GIVE NUMBER OR REASON AND ATTACH CERTIFICATE	
CITY & STATE		ZIP CODE		

CITY	CNTY	NAME 2	BILLING NO.	CITY CD	CTAX	CNTAX

AREA CODE PHONE NO.

INSTRUCTIONS 3/19

CODE	QUANTITY	PKG.	DESCRIPTION	UNIT PRICE	UNIT	EXTENSION
	24	24	SPOTSH Parts	47 60	EA	94 80
	6				EA	
			Alcoa			
			Wash			94 80

This shall become a contract upon acceptance thereof by National Chemsearch, division of USAchem, Inc., at the factory office specified in the top margin above, or at its office, by either (a) transmittal to buyer of written acceptance thereof, or (b) prompt shipment of the merchandise ordered. When so accepted, this document shall contain the entire agreement between the parties. Until such acceptance, this document shall have no legal effect other than as an offer to purchase by buyer. Quotations subject to change without notice. All claims for errors in shipments must be made within five days after receipt of goods.

PAYABLE IN DALLAS COUNTY, TEXAS. PLEASE READ THIS ORDER AND SEE THAT IT CONTAINS THE ITEMS AND QUANTITIES THAT YOU HAVE ORDERED

ORDERED BY [signature] TITLE

REFERENCES YES ☐ NO ☐ WHAT CITY

CREDIT INFORMATION — NEW ACCOUNTS ONLY
COMMERCIAL
ADDRESS
BANK & CITY

National Chemsearch

P. O. Box 7179 – Irving, Texas 75060
2727 So. Central Ave. – St. Louis, Missouri 63104
P. O. Box 1264 – Sunnyvale, California 94088
P. O. Box 25 – Monmouth Junction, New Jersey
P. O. Box 614 – Honolulu, Hawaii 96809

CUSTOMER NO. 2001 HOSTAD-HORSON INC. CUSTOMER P. O. NO. SALESMAN CODE 272 SALESMAN NAME GERSTEL SALESMAN'S COPY DATE 11-

NAME NIAGARA MOHAWK CO
ADDRESS SCHOOL ST
CITY & STATE CLOTHIER MN
ZIP CODE 12040
ORDER STATUS FIRST
F.O.B. DD
COUNTY | F.O. | IC | CITAX | FLAGS | SALESMAN | M/C | TELEPHONE | NEW ACCOUNT YES | ZON | CARD | CA | GRID | SIC | CITY | NAME | TL | P | CUSTOMER NUMBER

NAME
CARE OF PAUL C
ADDRESS
CITY & STATE ST PAUL MN
ZIP CODE
TAXABLE YES ☐ NO ☐
IF EXEMPT GIVE NUMBER OR REASON & ATTACH CERTIFICATE
CITY | CNTY | NAME | BILLING NO. | CITY CO? | CITAX | CNTAX

INSTRUCTIONS REFER TO FILE. CUSTOMER HAS BLANKET ORDER FOR ALL BIDDING.
AREA CODE PHONE NO.

CODE	QUANTITY	PKG.	DESCRIPTION	UNIT PRICE	UNIT	EXTENSION
	48	48	YIELD 1.5	40.20	M	1929.60
			3 1/2			
			ALL			
						1929.60

shall become a contract upon acceptance thereof by National Chemsearch, Division of Ucolite, Inc. at the factory office specified in the top margin above, or at its office in Dallas by either (a) transmittal to buyer of written acceptance thereof, or (b) prompt shipment of the merchandise ordered. When so accepted, this document shall contain the entire agreement between the parties. Until such acceptance, this document shall have no legal effect other than as an offer to purchase by buyer. Quotations subject to change without notice. All claims for errors or omissions in shipments must be made within five days after receipt of goods.

ACCOUNT PAYABLE AT DALLAS COUNTY, TEXAS. PLEASE READ THIS ORDER AND SEE THAT IT CONTAINS THE ITEMS AND QUANTITIES THAT YOU HAVE ORDERED.

SOLD BY Earl Martin TITLE

REFERENCES — ONE — CREDIT INFORMATION — NEW ACCOUNT
D & B ? COMMERCIAL
YES NO
WHAT CITY ADDRESS
BANK & CITY

SALESMAN'S COPY

00207C1 | 9/d GERSTEL | 10

NAME: CENTRAL WAREHOUSE CORP
ADDRESS: COLONIE & MONTGOMERY
CITY & STATE: ALBANY NY
CARE OF: MR CONLIN
ZIP CODE: 12207
ORDER STATE: NY
CLASS: 311
NEW ACCOUNT: YES ☐ NO ☐
TAXABLE: YES ☐ NO ☐
TAX NO. CERTIFICATE OR IF EXEMPT:
A/C ( ) TELEPHONE:

COUNTY | TERR | IC | D | TAX | TERMS | SALESMAN | ZONE | CARR 1 | CARR 2

GRID | SIC | CITY | NAME | FILE | PA

NAME
CARE OF
ADDRESS
CITY & STATE

CITY | CITY | NAME | BILLING NO | ZIP CODE | CITY CO | CITY | CNTAX

SPECIAL INSTRUCTIONS

3/19

OFFICE ONLY	CM	CODE	QUANTITY	PKG.	DESCRIPTION	UNIT PRICE	UNIT	EXTENSION
			24	24	55-25 gm lb.	4 78	S	94 60
			8					
								94 60

...shall become a contract upon acceptance thereof by National Chemsearch, division of Ecolab, Inc., at the factory office specified in the top margin above, or at its office ... County, Texas, by either (a) transmittal to buyer of written acceptance thereof, or (b) prompt shipment of the merchandise ordered. When so accepted, this document shall contain ... agreement of the parties. Until such acceptance, this document shall have no legal effect other than as an offer to purchase by Buyer. Quotations subject to change without ... notice for errors or adjustments of any kind MUST be made within five days after receipt of goods.

ACCOUNT PAYABLE IN DALLAS COUNTY, TEXAS. PLEASE READ THIS ORDER AND SEE THAT IT CONTAINS THE ITEMS AND QUANTITIES THAT YOU HAVE ORDERED.

SIGNED BY: [signature]

AGREED BY: | TITLE:

CREDIT INFORMATION NEW ACCOUNTS ONLY

BANK:
CITY: BRANCH AND POST OFFICE STREET ADDRESS
D & B
CITY LISTED

SALESMAN'S COPY

ALPHA PORTLAND CEMENT CO.

CEMENTON KY

J. DECKER

Kapp

173a

National Chemsearch

☐ P. O. Box 2170 — Irving, Texas 75060
☐ 222 So. Central Ave. — St. Louis, Missouri 63105
☐ P. O. Box 1264 — Sunnyvale, California 94088
☐ P. O. Box 25 — Waipahu Station, Hawaii 96797
☐ P. O. Box 614 — Honolulu, Hawaii 96809

SALESMAN'S COPY DATE

CUSTOMER NO. 00204836 CUSTOMER P. O. NO. SALESMAN CODE 978 SALESMAN NAME GERSTELL

NAME ALBANY Dist
ADDRESS Rd RT. 6 ALBANY
CITY & STATE ALBANY N.Y.
CARE OF FRED HUFFMAN
ZIP CODE 12206
ORDER STATUS WIRE
F.O.B. NO
COUNTY F.O.B. TC CR TX FLAGS SALESMAN ZONE CARR 1 CARR 2
GRID MC ST CITY NAME PLT PA
NEW ACCOUNT YES ☐ NO ☐
TAXABLE YES ☐ NO ☐
TAX NO. CERTIFICATE OR ID IF EXEMPT
A/C ( ) TELEPHONE

NAME SAME AS ALBANY FRED HUFFMAN
CARE OF
ADDRESS
CITY & STATE
ZIP CODE
CITY CITY NAME BILLING NO. CITY CO CITAX CNTAX

SPECIAL INSTRUCTIONS 3/17

PRICE ONLY	CM.	CODE	QUANTITY	PKG.	DESCRIPTION	UNIT PRICE	UNIT	EXTENSION
			40	48	YIELD Lmbs	16.50	M	1980
			8				0	
					Further Order Pending			
								164.60

This order shall become a contract upon acceptance thereof by National Chemsearch, division of Diachem, Inc., at the factory office specified in the top margin hereof, or at its office in Dallas, Texas, by either (a) transmittal to buyer of written acceptance thereof, or (b) prompt shipment of the merchandise ordered. When so accepted, this contract shall contain the entire agreement of the parties. Until such acceptance, this document shall have no legal effect other than as an offer to purchase by buyer. Quotations subject to change without notice. Claims for errors, shortages or adjustments of any kind must be made within five days after receipt of goods.

ACCOUNT PAYABLE IN DALLAS COUNTY, TEXAS. PLEASE READ THIS ORDER AND SEE THAT IT CONTAINS THE ITEMS AND QUANTITIES THAT YOU HAVE ORDERED

ORDERED BY Leonard Rose
RECEIVED BY TITLE

CREDIT INFORMATION NEW ACCOUNTS ONLY.
BANK
CITY IF STATION HAS FILED DIFF. STREET ADDRESS
D & B
CITY LISTED

175a

NATIONAL CHEMSEARCH

☐ 222 So. Central Ave. — St. Louis, Missouri 63105 ☐ P. O. Box 614 — Honolulu, Hawaii 96809
☑ P. O. Box 1264 — Sunnyvale, California 94088 ☐ P. O. Box 26906 — Indianapolis, Indiana 46226

SALESMAN'S COPY

MER NO.	CUSTOMER P. O. NO.	SALESMAN CODE	SALESMAN NAME	DATE	
00468838	WF-36	978	GERSTELL	3-6-75	

NAME	LEHIGH PORTLAND CEMENT Co.			MC SALESMAN CHG. NO.	1235
DRESS	P O BOX 117			ORDER STATUS: FUTURE SHIP / FUTURE BILL	RUSH GET TODAY
CITY & STATE	CEMENTON NY	ZIP CODE	12415	F.O.B.	DF
RE OF	PLANT MANAGER			NEW ACCOUNT ☐ YES	N

COUNTY	F.O.B.	IC	CH	TX	FLAGS	SALESMAN	ZONE	CARR 1	CARR 2

TAXABLE YES ☐ NO ☐

TAX NO. CERTIFICATE OR REASON IF EXEMPT

GRID	S/C	ST	CITY	NAME	PLT	PA

NAME	SAME		
CARE OF	MR. A.H. ULLER	MC 918 943	TELEPHONE 2700
DRESS	ALSEN GREEN CNTY PLANT		
ITY & STATE		ZIP CODE	

CITY	CNTY	NAME	BILLING NO.	CITY CD	CITAX	CNTAX

INSTRUCTIONS

3-18

E LY	CM	CODE	QUANTITY	PKG.	DESCRIPTION	UNIT PRICE	UNIT	EXTENSION
			5 CARS		SKATE	64 60	CL	320 60
							0	
					Acct. # WF-36-61			
					Plant			
					Clerk			
								320 60

shall become a contract upon acceptance thereof by National Chemsearch, division of USAchem, Inc., at the factory office specified in the top margin above, or at its office, unty, Texas, by either (a) transmittal to buyer of written acceptance thereof, or (b) prompt shipment of the merchandise ordered. When so accepted, this document shall contain greement of the parties. Until such acceptance, this document shall have no legal effect other than as an offer to purchase by buyer. Quotations subject to change without aims for error or adjustments of any kind MUST be made within five days after receipt of goods.

OUNT PAYABLE IN DALLAS COUNTY, TEXAS. PLEASE READ THIS ORDER AND SEE THAT IT CONTAINS THE ITEMS AND QUANTITIES THAT YOU HAVE ORDERED

ED BY: Wood Hine

CO BY: TITLE

CREDIT INFORMATION NEW ACCOUNTS ONLY

BANK

CITY IF DIFFERENT THAN ABOVE

D & B CITY LISTED

Fawcett 4/8/75

1. too expensive
2. Business slow

176a

EXHIBIT "G"

Salesman

00-08-03-01-0630

Don Kramer
Ed Fawcett

4/9/75

1) over stocked
2) business slow

4/10

1. Satisfied with what he's using
2. Business slow
3. Stocked
4. Stocked
5. Too expensive

Exhibit "G"

Don Kramer 4/11/75
Ed Fawcett

(1) Supply on hand
(2) " " "
(2A)
(2B) too expensive
(3) too expensive

Don Kramer 4/12/75
Ed Fawcett

(1) Supply in stock
(2) satisfied with present ~~stock~~ product
(3)

Don Kramer
Ed Fawcett 4/14/75

(1) price too high
(2) satisfied with present product
(3) Father and son, doesn't son, needs fishes appears to buy out

Don - Had car trouble, would take 5 or 4 days to repair set caught a 35 lbs.

Don Kramer
Ed Fawcett 4/15/75

(1) Test on hand
(2) " " "
(3) Too expensive
(4) Plant being reorganized
(5) Check on parts
(6) just bought a supply from Mr Waldman
the name of the co. is Dyna Chem

Don Kramer
Ed Fawcett 4/16/75

(1) satisfied with present supplys
(2) " " " "
(3) Too EXPENSIVE
(4) 50# Chem Zyme I 287.50

Don Kramer
Ed. Fawcett 4/17/75

(1) Too expensive
(2) Wife does buying for household
Gut.
(3) Too expensive

Don Kramer
Ed Fawcett 4/18/75

(1) Demand Liaison - sen - factor dealing with reaction
(2) supply on hand
(3) Sin after budget starts
(4) satisfied with what he is using
(5) price

Don Kramer
Ed Fawcett 4/21/75

(1) Price to high

(2) Price to high "on ND 192, Glisten, Tall
sold 50# Chemzyme I 28.50

Don Kramer
Ed Fawcett 4/22/75

(1) Buy from member of the church.
(2) Large supply on hand
(3) Supply on hand
(4) price
(5) satisfied with present products
(6) Nu-Tallo Horse 50# Chemzyme I 28.50
(7) Blue Heart Mill Feeds 50# Chemzyme I 28.50

2

180a

Don Kramer
Ed Fawcett 4/25/75

(1) Satisfied with present supplier
(2) price to high
(3) price to high

Don Kramer
Ed Fawcett 4/24/75

(1) satisfied with products he is using
(2) Only buys local
(3) Price too high

Don Kramer
Ed Fawcett 4/25/75

(1) management changing hands
(2) satisfied with present supplier
(3) Partner does buying
4 Price to high

Don Kramer
Ed Fawcett — 4/28/75

(1) Mining stuck on level
(2) H.L. sample from freight on the Caseview
(3) Large supply on hand

Don Kramer
Ed Fawcett — 4/29/75

(1) Needs approval to buy
(2) Supply on hand continues ok

Don Kramer
Ed Fawcett — 4/30/75

(1) Buying land

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK.
ALBANY DIVISION

USAchem Inc., a Texas Corporation, Plaintiff, -against- MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM, Defendant.	Civil Action No. 75-CV-170 Attorney's Affidavit in Opposition to Plaintiff's Motion for a Preliminary Injunction

STATE OF NEW YORK:
: SS.:
COUNTY OF ALBANY :

BARRY R. FISCHER, being duly sworn, deposes and says:

1. He is a member of O'Connell and Aronowitz, P.C., the attorneys for Defendant, Melvin R. Waldman, and as such, he is fully familiar with the facts and circumstances of this case.

2. He makes this affidavit in opposition to Plaintiff's motion for a Preliminary Injunction.

3. This Affidavit will concern itself solely with an analysis of the contract upon which Plaintiff sues in this case and with an analysis as to how this contract differs significantly and markedly from the contract involved in USAchem Inc. v. Goldstein.

4. In the instant action, Plaintiff appears to be suing upon two (2) separate and distinct contracts. One, a "Sales Representative's Agreement" was executed on January 19, 1968. The other, a "District Sales Manager's Agreement" was executed on February 1, 1970. Defendant, Waldman, was initially hired by Plaintiff as a salesman

and this relationship continued up to February 1, 1970. On that date, Plaintiff terminated the Sales Representative's Agreement and entered into a new agreement, the District Manager's Agreement. As is argued extensively in our accompaning Brief, the Sales Representative Agreement was rescinded and canceled on February 1, 1970. Therefore, the only contract in force between Plaintiff and Defendant on February 3, 1975, the date of Defendant's termination of employment, was the District Sales Manager's Agreement.

5. Plaintiff itself considered Mr. Waldman's position significantly changed by the execution of the new District Manager's Agreement. Plaintiff was no longer a saleman. He was now a District Manager. Attached hereto and made a part hereof and marked Exhibit "A" are commission statements. One, dated January 31, 1970, is the last commission statement for Defendant as a salesman. The other, dated February 28, 1970, is the first District Manager's Report.

6. The District Sales Manager's Agreement signed by Mr. Waldman, is attacted hereto as Exhibit "C". To aid the Court in its analysis, we attach hereto and mark Exhibit "B" a photocopy of the contract sued upon in the Goldstein case. The Court should have little trouble in seeing that these are entirely and totally different contracts, containing vastly different provisions.

7. The following are very significant differences between the Goldstein contract and the District Manager's

Contract which Melvin Waldman signed:

(a) The Goldstein Contract speaks of payment to the salesmen on a commission basis. Paragraph 1 of the Waldman Contract speaks of a weekly salary of Two Hundred and 00/100 ($200.00) Dollars per week.

(b) The Goldstein Contract in paragraph 1 allows the contract to be amended from time to time by the company. The Waldman Contract allows for no such amendment on the part of the company.

(c) The Goldstein Contract specifically allows, at the end of paragraph 1, the company to have the right to do business in the assigned territory under various trade names and to have other representatives in the territory to sell and solicit. The Waldman Contract on the other hand, does not at any place allow the company to do business under other trade names nor does it allow other representatives in the assigned territory. In the instant case this is highly significant, because one of the many breaches of the Waldman Contract made by Plaintiff was that Plaintiff allowed salesmen from Certified Laboratories to come into Waldman's assigned territory and to sell in competition with Waldman. Under the Goldstein Contract this would have been permissible. Under the Waldman Contract it was clearly not permissible.

(d) The Goldstein Contract in paragraph "7" thereof, provides that upon the salesman's termination no commission shall be due on orders secured by him but

not shipped. There is no such provision in the Waldman Contract.

(e) There are numerous other distinctions between the two (2) contracts. They are not even contracts for the same type of job, one being a manager and the other being a salesman.

8. The foregoing analysis clearly indicates that much of the reasoning of the Circuit Court of Appeals in the Goldstein case is not applicable to the instant case, since the contracts involved are vastly different. Furthermore, as has been amply demonstrated in Defendant Waldman's Affidavit in Opposition to the Motion, Plaintiff committed serious, irreparable and significant breaches of the District Manager's Agreement, all of which relieved Defendant Waldman from any corresponding obligation on his part to be bound by the negative covenants contained in the District Manager's Agreement. Even the covenants contained in the District Manager's Agreement are significantly different from those contained in the Goldstein Agreement. They are also significantly different from the covenants contained in Defendant Waldman's original, but rescinded, Sales Representative's Agreement.

9. In conclusion, there are two (2) significant reasons why the Court should deny Plaintiff's Motion for a Preliminary Injunction and should depart from the reasoning employed by the Second Circuit Court of Appeals in the Goldstein case: The contracts are vastly different

and the contract in the case at bar was breached by the Plaintiff prior to Defendant's termination of employment and prior to the institution of this law suit.

WHEREFORE, deponent respectfully requests an Order of this Court denying in all respects Plaintiff's Motion for a Preliminary Injunction, together with such further, other and different relief as to this Court seems just and proper.

B. R. F.

Barry R. Fischer

Sworn to before me this
6th day of June, 1975.

Susan M. O'Brien

Notary Public, State of New York

SUSAN M. O'BRIEN
Notary Public, State of New York
Qualified in Albany County
Commission Expires March 30, 1977

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EXHIBIT "A"

MR M R WALDMAN

2381

COMMISSION STATEMENT

JANUARY 31,1970

CREDIT BALANCE AS OF DECEMBER 31,1969		********** * 835.61- **********
CHARGES		
ADVERTISING NOVELTIES	98.75	
MISC CHRG OR CR /-/		
CHECKS ISSUED		
CHECK NO	AMOUNT	
19367	200.00	
21302	200.00	
22288	200.00	
23649	200.00	
29372	835.61	
TOTAL CHECKS	1,635.61	
TOTAL CHARGES THIS MONTH		1,734.36
NET CHARGES TO DATE		898.75
CREDITS		
GROSS COMMISSIONS	2,825.87	
DELINQUENT PAYMENTS	68.98	
COMMISSION CREDITS		
OTHER CREDITS TRAINING	140.00	
LESS- EQUIPMENT & APPLICATORS	97.10-	
LESS- FREIGHT CHARGES	42.97-	
LESS- COMM. & FRT. ON RETURNS	94.37-	
LESS- DELINQUENT CHARGES	122.79-	
NET COMMISSION EARNED	2,675.52	
NET CREDITS FOR THIS MONTH		2,675.62
CREDIT BALANCE AS OF JANUARY 31,1970		********** * 1,775.87- **********

ESTIMATE OF PENDING ORDERS

ESTIMATE LAST MONTH	4,986.90	
PLUS- SALES THIS MONTH	8,165.00	
LESS- GROSS BILLING THIS MONTH	9,366.70-	
ESTIMATE OF ORDERS STILL PENDING		3,785.20
ACTUAL AUDIT COUNT OF PENDING ORDERS		

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MR M R WALDMAN 2381

DISTRICT MANAGER REPORT

FEBRUARY 23, 1970

CREDIT BALANCE AS OF JANUARY 31, 1970		********** * 1,776.87- **********
CHARGES		
ADVERTISING NOVELTIES	7.20	
MISC CHRG OR CR /-/		
CHECKS ISSUED		
CHECK NO	AMOUNT	
25116	200.00	
26505	200.00	
27794	200.00	
29153	200.00	
25908	1,776.87	
TOTAL CHECKS	2,576.87	
TOTAL CHARGES THIS MONTH		2,584.07
NET CHARGES TO DATE		807.20
CREDITS		
GROSS COMMISSIONS	2,211.13	
DELINQUENT PAYMENTS	326.80	
COMMISSION CREDITS		
OTHER CREDITS TRAINING	70.00	
LESS- EQUIPMENT & APPLICATORS	24.65-	
LESS- FREIGHT CHARGES	13.56-	
LESS- COMM. & FRT. ON RETURNS	36.75	
LESS- DELINQUENT CHARGES	177.99-	
NET COMMISSION EARNED	2,428.48	
NET CREDITS FOR THIS MONTH		2,428.48-
CREDIT BALANCE AS OF FEBRUARY 23, 1970		********** * 1,621.28- **********

ESTIMATE OF PENDING ORDERS

AUDIT COUNT LAST MONTH	3,103.00	
PLUS- SALES THIS MONTH	12,957.00	
LESS- GROSS BILLING THIS MONTH	7,309.35-	
ESTIMATE OF ORDERS STILL PENDING		
ACTUAL AUDIT COUNT OF PENDING ORDERS		8,750.65

EXHIBIT "A" (PAGE 2)

SALE REPRESENTATIVE'S AGREEMENT EXHIBIT "B"

THIS AGREEMENT, made and entered into this 19th day of April 196 3, between NATIONAL CHEMSEARCH CORPORATION OF NEW YORK, a Texas corporation (hereinafter referred to as "Company"), and Howard Alan Goldstein (hereinafter referred to as "Representative"):

WITNESSETH:

In consideration of One Dollar ($1.00) and other good and valuable considerations in hand paid by Company to Representative, the employment of Representative upon the terms and provisions herein set forth, the mutual covenants and agreements herein contained and each act done pursuant hereto by either of the parties, it is covenanted and agreed as follows:

1. Company hereby employs Representative, subject to the conditions hereinafter set forth, as a sales representative on a commission basis in the territory specified in Paragraph 4 or such other territory(ies) as Company in its discretion may from time to time assign to Representative (such territory being hereafter referred to as the "assigned territory"). The Commissions to be paid to Representative shall be in accordance with the Commission Schedule and Commission Rules and Regulations of the Company as amended by the Company from time to time. Company may periodically advance to Representative against Commissions earned and commissions to be earned amounts established by the Company from time to time. The Company shall have the right to do business in the assigned territory under various trade names. The Company reserves the right to employ other Representatives to solicit and sell in the assigned territory.

2. Representative accepts said employment, and it is agreed that the duties of the Representative shall be such as are from time to time assigned to him by the president, any vice president, secretary, treasurer, sales manager, sales trainer, or office manager of Company.

3. It is expressly recognized and acknowledged by Representative that Company and its affiliated and associated Companies are engaged in the manufacture, distribution and sale of disinfectants, soaps, detergents, cleaners, insecticides, chemical specialties, paints, water treatments, maintenance chemicals, adhesives, glues, paper products for industry and institutions, degreasing and sanitary supply and floor maintenance materials and equipment and related products, in substantially all of the states in the continental limits of the United States, including the assigned territory. It is expressly recognized and acknowledged by Representative that (i) Company has developed and established a valuable and extensive trade of its products; (ii) its business connections and customers have been established and maintained at great expense and are of great value to it; (iii) that Representative desires employment by Company and by virtue of such employment Representative will become familiar and possessed of the manner, methods and secrets and confidential information pertaining to such business, including without limitation; sales volume and strategy, number and location of sales representatives, and names and lists of Company's customers and clientele; (iv) by virtue of such employment Representative will become personally acquainted with the customers and trade of Company in the assigned territory; and (v) Company will suffer great loss and damage if, during Representative's employment by Company or at any time subsequent to the termination of such employment, Representative should (a) for himself or on behalf of any other person(s), firm(s), partnership(s) or corporation(s) sell, offer for sale or solicit the sale of disinfectants, soaps, detergents, chemical specialties, paints, water treatments, maintenance chemicals, cleaners, insecticides, adhesives, glues, paper products for industry and institutions, degreasing, sanitary supply and floor maintenance materials and equipment in the assigned territory or (b) engage in or enter the employment of or act as a sales agent or broker for the products of or as an advisor or consultant to any person(s), firm(s), partnership(s), or corporation(s) engaged in or about to be engaged in the manufacture, distribution or sale of disinfectants, soaps, detergents, chemical specialties, paints, water treatments, maintenance chemicals, cleansers, insecticides, adhesives, glues, paper products for industry and institutions, degreasing, sanitary supply and floor maintenance materials and equipment business in the assigned territory. Representative further recognizes and acknowledges that (i) it will be difficult, if not impossible to compute the amount of such loss or damages, (ii) by reason of Representative's financial circumstances Representative cannot respond in damages in an action at law to compensate Company for such loss or damages, and (iii) Company, accordingly, is without adequate legal remedy in the event Representative violates any of the covenants contained in Paragraphs 4 and 5. Representative acknowledges that the covenants and conditions of this Agreement are reasonable and necessary for the protection of the Company's business.

4. Representative expressly covenants and agrees that during the term of his employment by Company and for a period of eighteen (18) months immediately following the expiration or termination of such employment for any reason including, without limitation, termination by mutual agreement, (i) he will not at any time for himself or on behalf of any other person(s), firm(s), partnership(s), or corporation(s), sell, offer for sale, or solicit the sale of disinfectants, soaps, detergents, cleaners, chemical specialties, paints, water treatments, maintenance chemicals, insecticides, adhesives, glues, paper products for industry and institutions, degreasing and sanitary supply and floor maintenance materials and equipment within the assigned territory, viz:

A. The following counties in the State of New York: Steuben, Yates and Ontario plus the following municipalities in Monroe County, New York: Honeoye Falls, Rush, Mendon, Henrietta, Pittsford, Ridgeland and Rochester.

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B. Any territory (ies) which is hereafter assigned to Representative by written contractual change or designation;

C. Any territory (ies) not presently assigned to Representative, but which was assigned as part of his territory under any prior contract of employment with Company or one or more of its Affiliated and associated companies;

D. Any territory(ies) [illegible] parties whether or not such agreement is evidenced in writing;

E. Any territory(ies) which Company in the exercise of its discretion may assign to Representative, whether or not such assignment is evidenced in writing;

F. Any territory(ies) in which Representative sells, offers for sale, or solicits the sale of disinfectants, soaps, detergents, cleaners, chemical specialties, paints, water treatments, maintenance chemicals, insecticides, adhesives, glues, paper products for industry and institutions, degreasing and sanitary supply and floor maintenance materials and equipment for Company or one or more of its affiliated and associated companies;

and (ii) he will not in any way, directly or indirectly, for himself or on behalf of or in conjunction with any other person(s), partnership(s), firm(s) or corporation(s), solicit, divert, take away or attempt to take away any of the Company's customers or the business or patronage of any such customers located within said assigned territory. Representative further covenants and agrees that he will not within said period of time, directly or indirectly, engage in or enter the employment of or act as a sales agent or broker for the products of or as an advisor or consultant to any person(s), firm(s), partnership(s) or corporation(s) engaged in or about to become engaged in the manufacture, distribution or sale of disinfectants, soaps, detergents, cleaners, insecticides, chemical specialties, paints, water treatments, maintenance chemicals, adhesives, glues, paper products for industry and institutions, degreasing and sanitary supply and floor maintenance materials and equipment within the assigned territory. In the event of violation by Representative of any one or more of the covenants contained in this paragraph, it is agreed that the term of each such covenant so violated shall be automatically extended for a period of eighteen (18) months from the date on which Representative permanently ceases such violation or for a period of eighteen (18) months from the date of the entry by a court of competent jurisdiction of a final order or judgment enforcing such covenant(s), whichever period is later.

5. Each restrictive covenant hereinabove set forth in Paragraph 4 is separate and distinct of every other restrictive covenant set forth in said paragraph and in the event of the invalidity of any such covenant the remaining obligations shall be deemed independent and divisible. The parties agree that the inclusion of all the territories hereinabove set forth in Paragraph 4 is reasonable and necessary for the protection of Company. If, however, the inclusion of all said territories shall be deemed too extensive and therefore unreasonable, such lettered paragraph under Paragraph 4 above shall be deemed as separate and divisible, and to the extent necessary to make the territory reasonable, shall be eliminated in the reverse order from which each is stated.

6. Representative shall not at any time, either during his employment or after the termination of such employment, divulge to others or use for his own benefit any confidential information obtained during the course of his employment by Company relating to sales, formulae, processes, methods, machines, manufactures, compositions, ideas, improvements or invention belonging to or relating to the affairs of Company, its subsidiaries, affiliates, successors or associated companies.

7. It is agreed that if Representative's employment by Company is terminated for any reason, no commissions shall be due or payable to Representative on orders secured by him but not shipped as of the effective date of such termination.

8. Representative agrees during the term of said employment that he will devote his entire time and attention exclusively to the business and interests of the Company and that he will perform to the entire satisfaction of the Company, such duties as may be assigned to him and that he will do his utmost to further enhance and develop the business interests and welfare of the Company.

9. This agreement shall be effective upon execution and may be terminated at any time by either party without notice.

10. In connection with Representative's performance of his duties and obligations in the assigned territory, Company is furnishing Representative with sales catalogs, brochures, samples, sample cases, machinery, equipment and other sales aids and will from time to time during Representative's employment furnish additional sales aids. It is understood and agreed that all such property so furnished Representative is and will remain the property of Company. Representative recognizes and agrees that said sales aids and other property furnished him have been carefully developed by Company over long periods of time at great cost and expense; that because of Company's great expenditures for research and development and for exclusive merchandising tools and methods, great loss and damage will result to Company if said sales aids or other preporty should fall into the hands of unauthorized persons; that failure to return same in the event of the termination of his employment will cause great loss and damage to the Company; that such loss and damage is difficult, if not impossible to compute. Accordingly, in the event Representative's employment is terminated for any reason, or no reason, Representative agrees to return all such property to Company at its main office, freight collect, and that in the event he fails or refuses for any reason, or no reason, to so return said sales aids and other property to Company, as herein agreed to he will pay to Company at its principal office the sum of $500.00 as liquidated damages and not as a penalty for breach of terms and provisions of this Paragraph.

11. This contract shall be construed under and governed by the laws of the STATE OF TEXAS.

12. The provisions of this contract shall be fully applicable whether Representative is employed by Company, or by any of its subsidiaries, affiliates, successors or associated companies, it being understood and agreed that this Agreement may be assigned without notice at any time and from time to time by Company to or by any of its subsidiaries, affiliates, successors or associated companies. In the event of such an assignment, any such Company to which the Agreement is assigned shall automatically be substituted for the Company executing this Agreement for all intents and purposes and to the same extent as if such assignee were the Company executing this Agreement.

IN WITNESS WHEREOF, Representative has herewith affixed his hand and seal and Company has caused this Agreement to be executed by a duly authorized officer, all the day and year first above mentioned.

NATIONAL CHEMSEARCH CORPORATION OF NEW YORK

By [signature]
COMPANY

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[signature] (Seal)
REPRESENTATIVE

EXHIBIT "C" Waldman's District Sales Manager's Agreement is reproduced as Exhibit "C" attached to the Complaint on page 24a of this Appendix.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, INC., a Texas Corporation,

Plaintiff

-against-

MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM,

Defendants.

CIVIL ACTION
NO. 75-CV-170

SUPPLEMENTARY AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

STATE OF TEXAS)

COUNTY OF DALLAS)

NEAL E. YOUNG, being first duly sworn, says:

1. That he is an attorney and member in good standing of the Bar of the United States District Court for the Northern District of Texas, the Second Circuit Court of Appeals for the United States, and associated with the firm of Tobolowsky & Schlinger, one of the counsel of record for Plaintiff herein.

2. That as one of the counsel of record in this cause, I have had occasion to examine and compare certain additional records produced in this cause including the following:

a) The daily sales activity reports of David Waddington and Edward Fawcett, the two salesmen hired by Plaintiff to replace Defendant Waldman;

b) Copies of invoices produced by Defendant Waldman including all paid invoices and all account receiveable invoices which purport to show all the sales made by Defendant Waldman of chemical specialty products from February 3, 1975 up through May 27, 1975;

c) The customer list of Plaintiff which includes all of the customers that Defendant Waldman solicited and sold on behalf of Plaintiff during his employment with Plaintiff.

That after having compared and examined these records and after having examined certain representations and conclusions made about these records by Mr. Waldman in his Affidavit, I have been able to determine that Mr. Waldman has misrepresented what those records show in the following respects:

a) Waldman represents that an analysis of the comments on Fawcett's daily analysis sheets reveals that Plaintiff lost only one sale as a result of competition from Defendant Waldman;

b) That I found Mr. Waldman's conclusion to be wholly inaccurate in that a careful analysis of the daily analysis sheets showed that Fawcett made 52 solicitations of accounts that Waldman had sold previously on behalf of Plaintiff, that Fawcett made 14 sales to these accounts; then comparing these accounts to Waldman's invoices, I determined that Waldman made 66 different sales to these same accounts;

c) That additionally I was able to determine that in the instance of 25 of the 52 accounts, Waldman had been in to see that account and made a sale to that account just ahead of or prior to Fawcett soliciting that account and that as to 12 of those accounts, Fawcett was told that they already were well stocked or were too busy to see him;

d) That one account, Stanford Central Schools, told Fawcett on March 25 that it only bought by bid but thereafter bought on direct invoice from Waldman on April 10 and on May 21;

e) That the total volume of sales by Fawcett to customers formerly sold by Waldman on behalf of Plaintiff was $3,883.60;

f) That the total volume of sales by Waldman since his date of termination to these same accounts is $13,102.35.

3. That I have additionally undertaken to make the same comparison of Waddington's records and have determined the following:

a) That Waddington made 40 solicitations on accounts formerly sold by Waldman on behalf of Plaintiff;

b) That Waddington was able to make a total of 10 sales to these accounts formerly sold by Waldman on behalf of Plaintiff totaling $1,340.65;

c) That as to these same accounts, Waldman made a total of 28 sales;

d) That as to 11 of the 40 accounts, Waldman had made a sale prior to or just ahead of Waddington calling upon that account and was told in 4 instances that they were either well stocked or too busy to see him and in one instance that they had just bought from Waldman;

e) That Waldman's sales to these accounts total $7,130.85.

4. That during the same period of time that Defendant Waldman was making $32,334.95 in sales to the customers he formerly sold on behalf of Plaintiff, Plaintiff has been able to achieve only $7,464.25 in sales to these same customers. This hardly comports with Defendant Waldman's conclusion that Plaintiff lost only two sales during this entire period of time as a result of competition from Waldman.

5. That Waldman's analysis lacks credibility is obvious because he makes the fatal error of lumping together all solicitations by Plaintiff's new salesmen whether they are new accounts or accounts not ever sold, solicited or serviced by Waldman on behalf of Plaintiff. The only accounts that are pertinent to analyze are those accounts which were formerly sold by Waldman on behalf of Plaintiff. It is only as to these accounts that Plaintiff seek the protection of an injunction and it is as to these accounts that Waldman's competition has been so devastating.

6. That Defendant Waldman has additionally attempted to mislead

the Court by taking comments made on the records kept in the ordinary course of business by salesmen to communicate his sales activities to his sales managers out of context and imply that it was done in connection with this law suit. As can be seen from the previous analysis, Waldman's characterizations could not be further from the truth.

Further Affiant saith not.

Neal E Young

NEAL E. YOUNG, AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME this 24th day of June, 1975.

[illegible]

NOTARY PUBLIC, DALLAS COUNTY, TEXAS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, INC., a Texas coporation,

Plaintiff,

-against-

Melvin R. Waldman and Melvin R. Waldman d/b/a DynaChem,

Defendants.

Civil Action
No. 75-CV-170

SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK:
COUNTY OF : ss.:

NORMAN STEINMAN, being first duly sworn, says:

1. This affidavit is given to supplement the previous affidavit which I signed and was filed in this cause on June 2, 1975.

2. In Mr. Waldman's affidavit he refers at great length to his job application and my failure to be candid with him concerning his employment, what the job was, and my failure to advise that Certified Laboratories was selling similar products within the territory that was to be assigned to him. I attach to this affidavit as Exhibit A a New Salesman's Check List which I prepared at the time of his employment

in early 1968. This exhibit clearly demonstrates, contrary to some of the statements in Mr. Waldman's affidavit, that: (a) his original assigned territory was on an account protected basis and not an exclusive territory; (b) the materials which were initially given to him as stated in my previous affidavit; (c) that I explained to him in detail the information about the affiliated companies of National Chemsearch including Certified Laboratories. Mr. Waldman was aware of Certified Laboratories and its salesmen in the same area as he served from the time of his employment.

3. Mr. Waldman's affidavit filed herein expounds at great length that he was not aware of the nature of the job that was being offered by National Chemsearch and that he was under the impression that it was a management position. I attach to this affidavit Exhibit B, a true copy of a letter received by me from Mr. Waldman dated December 29, 1967 which apparently was written in response to our company's advertisement for a salesman in the Albany Times Union. Again, this letter clearly demonstrates that he was applying for a job as a sales representative.

4. In Mr. Waldman's affidavit he comments at length about his reasons for terminating his employment. At the time I discussed his resignation with him in Albany on February 3, 1975, he told me that he was leaving because he was a nervous wreck and sick and didn't know what he was going to do and that his wife didn't want him to get sick. When Mr. Waldman's deposition was taken in this cause on May 1, 1975, he told plaintiff's counsel, Mr. Tobolowsky, concerning his resignation "I told him I was a nervous wreck and sick" (page 60 -- Waldman deposition) and "She said -- I want to keep my husband; I don't want him to have a heart attack - the crux of it" (Waldman deposition - page 61). Mr. Waldman's health apparently improved rapidly because the records produced show that he was making sales on behalf of DynaChem that were shipped as early as February 5, 1975.

Further affiant sayeth nothing.

Norman Steinman

Sworn to before me, this 5 day of June, 1975

Notary Public, State of New York
My commission expires:

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200a

EXHIBIT "A" Part 1

NEW SALESMAN'S CHECK LIST

NAME: Marvin & Waldman Tel. No.: [illegible]

ADDRESS: 941 Hoffman Dr. City: [illegible] State: NY 12110

INTERVIEWER: [illegible] CONTACT MADE BY:

Office Phone In _____
Road Phone In _____
Write In _____
Referral _____

SALES CARDS:

1. How should name appear? Mr. Waldman
2. Do you want home address? _____ yes (no)
3. Do you want home phone no.? _____ yes (no)

DRAW: 200 150 50 DO WE NEED: Route Book ✓
Delinquent list ✓

TERRITORY: Former salesman Worthington. Define territory as it should appear in contract: Greene - Schoharie & Albany Counties on an account protected basis.

SALES MANAGER: N. Stedman FIRST WEEK TRAINER: Plant

STARTING DATE: Today

CHECK IF YOU HAVE FURNISHED:

Presentation Book	✓	
Gears of Selling	✓	(Personnel Dept.)
Basic Manual	✓	
Price List	✓	
Commission list	✓	
Medical form	✓	(with return envelope)
Personal Product Benefit Sheets	✓	(46)
Sales Bag	✓	

Contr. sent 1/19

Exhibit A

Part 2

NEW SALESMAN'S CHECK LIST

FOR SALES MANAGERS:

Have you discussed: JAMES LAWKIN DEC.

Mohawk Labs, Hallmark Chemical, Certified Labs? ✓

Training program ✓

His territory, so that he understands it? ✓

Fringe benefits: (1. Hospitalization, Surgical-Major Medical policy; 2. Profit Sharing Program; 3. Accidental Death policy; 4. Life Insurance; 5. Health-Disability policy). ✓

\- - - - -

FOR OFFICE:

_____ Contract
_____ Cover letter
_____ Binder check
_____ Territory map
_____ Route book
_____ Delinquent list
_____ Eastern purchase orders
_____ Account Identification card
_____ Data sheets of recently introduced products
_____ Advertising brochure
_____ Convention & Advertising leads
_____ Blank calling cards
_____ "55 Gallon Plus" literature
_____ Yellow carbon report sheets
_____ New York return envelopes
_____ Copy of Work Plan
_____ Copy of Sprayer Policy
_____ Has "How to unpack sample line" been sent?
_____ Has "How to pack your bag? been sent?

202a 518-785-2932

EXHIBIT "B"

44 Hoffman Drive
Latham, New York 12110
December 29, 1967

Mr. Norman Steinman
National Chemsearch Corporation
New York, New York

Dear Mr. Steinman:

In answer to your advertisement in the Albany Times Union, I would like to present the following information concerning my business background and sales ability.

In June of 1957, I graduated from Syracuse University with a Bachelor of Arts in Economics, which included 13 hours in Chemistry. Following graduation, I fulfilled my military obligation and have since been honorably discharged from the army holding the rank of 1st Lt. in the Medical Service Corps.

For the past eight years, I have been the operator of a junior department store type of operation in the city of Cohoes, New York. The business had been my Father's, and upon his death eight years ago, I left my position as registered representative with Bache and Company to handle the business for my Mother.

If you are at all familiar with the City of Cohoes, you are aware of the fact that it is a dying city in the heart of a rapidly growing and vibrant suburbia. As the surrounding area has been enjoying increased business growth with an abundance of new discount stores, and shopping centers, the City of Cohoes has been on the opposite end of the see-saw. The major exception has been Waldman's Incorporated. I can say, with all sincerity, that this was due solely to my salesmanship and business ability.

Realizing that the only salvation for my business was to attract business from outside of the city itself, I branched into the parochial school uniforming business. This entailed direct contact sales, often in competition with the best trained salesmen from the largest uniforming outfits in the nation. Not only did I sell the integrity of my business and product to the school principals, but often times I was called upon to make presentation to the Mother's Clubs and Boards governing school policy. In the past three years alone, twelve area schools changed their contracts from national firms to Waldman's. This meant well inexcess of 10,000 new customers for the downtown area of Cohoes.

Seven days ago, a tremendous fire consumed the hub of downtown Cohoes. Our building was the third one to catch fire and was consequently totally destroyed. It is not surprising the Mayor of Cohoes, Dr. James Mc Donald was quoted as saying, "This is a tragedy for the city of Cohoes, since Waldman's is a real drawing power in the downtown area of Cohoes.

Exhibit B

Sales to the schools is not the total extent of my sales experience, just one phase of it. As in any retail operation the majority of my time was spent in direct contact with the consumer, from the bottom of the socio-economic ladder to the leaders of local industry.

Any business is only as good as its product, its integrity, and its sales representatives. If your product is one that I can truly believe in, then I am the man you are looking for.

very truly yours,

Mel Waldman

Mel Waldman

will call me

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, INC., A Texas Corporation,

Plaintiff,

-against-

MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM,

Defendants.

CIVIL ACTION NO. 75-CV-170

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK
COUNTY OF ALBANY : ss.:

EDWARD FAWCETT, being duly sworn, deposes and says:

1. That I am a sales representative for USAchem, Inc., the plaintiff herein.

2. That as a sales representative I work in part of the area previously held by the defendant Melvin R. Waldman.

3. That I make this affidavit in support of the plaintiff's motion for a preliminary injunction in this action.

4. That the affidavit of Melvin R. Waldman sworn to May 31, 1975 contains misleading and erroneous assumptions as to my difficulties in making sales to plaintiff's customers in the area.

5. That in completing my daily analysis sheets, I recorded remarks to indicate my activities to my sales manager

and not for the purposes of this litigation. It was not my intent to check up on Mr. Waldman or what he was doing.

6. That in addition to a number of instances where I was told by the customer that it either had large stocks on hand, was satisfied with present product or that our product was too expensive, in five specific instances I was told or became aware that sales by Mr. Waldman was the reason I could not make a sale:

a) On April 7, 1975, I was told by Pete Dalpe, at Greendale Packing, that he was now doing business with Mr. Waldman and did not want our products.

b) On April 10, 1975, I was told by a man named Si at the maintenance department of Borden's that he wouldn't buy from us because he was dealing with Mr. Waldman.

c) On April 15, 1975, I was told by a man named George, the manager at Toledo Scale, that they were buying from Mr. Waldman and would not buy from us.

d) On April 28, 1975, I was told by Harvey Engels, at J. De Beer & Son, that he would be buying from Mr. Waldman and would not buy from us.

e) On April 30, 1975, I was told by one of Mr. Howe's employees at SUNY at Cobleskill that he was all stocked up and he showed me large quantities of rug cleaner with DYNACHEM labels.

7. That I was told by Bob Deluca of Stamford Central Schools, a customer, that it could only purchase after bidding, which explanation I find to have been contradicted by the subsequent purchases from Mr. Waldman on direct invoice.

8. That Mr. Waldman's solicitations and numerous sales to and continuing relationship with plaintiff's customers have made it impossible for me to make sales to those customers.

s/Edward R. Fawcett
EDWARD FAWCETT

Sworn to before me this
9th day of June, 1975

s/Michael G Breslin
NOTARY PUBLIC, STATE OF NEW YORK
Commission Expires 3/30/7 6

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, INC., A Texas Corporation,

Plaintiff,

- against -

MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM,

Defendants.

CIVIL ACTION NO. 75-CV-170

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK:
COUNTY OF ALBANY : ss.:

DAVID WADDINGTON, being duly sworn, deposes and says:

1. That I am a sales representative for USAchem, Inc., the plaintiff herein.

2. That as a sales representative I work in part of the area previously held by the defendant Melvin R. Waldman.

3. That I make this affidavit in support of the plaintiff's motion for a preliminary injunction in this action.

4. That the affidavit of Melvin R. Waldman sworn to May 31, 1975 contains misleading and erroneous assumptions as to my difficulties in making sales to plaintiff's customers in the area.

5. That in completing my daily analysis sheets, I recorded remarks to indicate my activities to my sales manager

and not for the purposes of this litigation. It was not my intent to check up on Mr. Waldman or what he was doing.

6. That in addition to a number of instances where I was told by the customer that it either had large stocks on hand, was satisfied with present product or that our product was too expensive, in one specific instance I was told or became aware that sales by Mr. Waldman was the reason I could not make a sale:

a) On April 9, 1975, I was told by a man named Paul at Streck's in Menands, that he was doing business with Mr. Waldman and would not buy from plaintiff.

7. That Mr. Waldman's solicitations and numerous sales to and continuing relationship with plaintiff's customers have made it impossible for me to make sales to those customers.

David Waddington

DAVID WADDINGTON

Sworn to before me this

6th day of June, 1975

Ruth M. Rose

NOTARY PUBLIC, STATE OF NEW YORK
Commission Expires 3/30/76

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, INC., a Texas Corporation,

Plaintiff

-against-

MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM,

Defendants.

CIVIL ACTION
NO. 75-CV-170

SUPPLEMENTARY AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK:
SS:
COUNTY OF ALBANY:

MICHAEL G. BRESLIN, being duly sworn, deposes and says:

1. That he is an attorney admitted to practice in the United States District Court for the Northern District of New York and is associated with the firm of De Graff, Foy, Conway and Holt-Harris, attorneys for the plaintiffs herein, and as such, he is fully familiar with the facts and circumstances of this case.

2. That this affidavit is made in support of plaintiff's motion for a preliminary injunction.

3. That in the production of voluminous documents as requested by the defendant, through an oversight the executed copy of an amendment to Sales Representative's agreement between the plaintiff and the defendant, Melvin R. Waldman, dated May 22,

1972, was not initially located.

4. That the executed copy of the said amendment to the Sales Representative's agreement is attached hereto and submitted herewith.

5. That an unexecuted copy of the said amendment was attached to and incorporated in the original complaint.

Michael G Breslin

MICHAEL G. BRESLIN

SWORN TO BEFORE ME this 10th day of June, 1975.

Mary S. Batutis

NOTARY PUBLIC, ALBANY COUNTY, NEW YORK

MARY S. BATUTIS
Notary Public in the State of New York
Qualified in Albany County
Commission Expires March 30, 1976

211a

NATIONAL CHEMSEARCH®

...r in Chemical Research—Since 1919

401 Hackensack Ave. • Hackensack, N.J. 07601

May 22, 1972

Mr. Melvin R. Waldman
11 Vatrano Lane
Loundenville, N. Y. 12211

Re: Amendment to Sales Representative's Agreement between us dated January 19, 1968

Dear Mel:

Your Sales Representative's Agreement is hereby amended by the addition of the following territory as your "Assigned Territory."

Rensselaer and Columbia Counties in the State of New York

This Amendment shall be effective for all purposes as of May 22, 1972.

Please signify your approval of this Amendment by signing the original and the first and second copies of this letter in the space provided below for this purpose and thereafter attach one of the carbon copies so signed by you to your original Sales Representative's Agreement and return the original and one carbon copy so signed by you marked for my personal attention.

Sincerely yours,

NATIONAL CHEMSEARCH CORPORATION OF NEW YORK, INC.

By: _____
Norman Steinman, Division Manager

ACCEPTED AND AGREED TO:

This 25 day of May, 1972

_____
Melvin R. Waldman

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, INC., a Texas Corporation,

Plaintiff

Civil Action
No. 75-CV-170

-against-

MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM,

SUPPLEMENTARY AFFIDAVIT

Defendant.

STATE OF NEW YORK:
: SS.:
COUNTY OF ALBANY :

MELVIN R. WALDMAN, being first duly sworn deposes and says:

1. That this Affidavit is being submitted as a supplement to an affidavit sworn to on May 31, 1975, in opposition to Plaintiff's Motion for a Preliminary Injunction herein.

2. Plaintiff asserts in its Supporting Affidavit that its two salesmen who have taken over my territory since I terminated my employment with the Plaintiff have been at a serious disadvantage as a result of my alleged competition with Plaintiff. Examination of the first four months of my employment with the Plaintiff from February through May 1968 (See Exhibit "A"), indicate that my total sales amounted to Nine Thousand Eight Hundred Sixty-seven and 00/100 ($9,867.00) Dollars. This amounts to less than the total amount of sales made by Plaintiff during the four months

following my termination. It, therefore, appears that Plaintiff is performing better and is not losing sales at it maintains.

3. Plaintiff requests that I be enjoined from conducting my business in any territory where I previously performed duties in my employment with Plaintiff. As indicated in the exhibit attached hereto as Exhibit "B", as a part of my duties as District Sales Manager, I trained prospective salesmen throughout New York State and elsewhere in the United States.

4. Plaintiff also maintains that I have a competitive edge because of my knowledge with respect to Plaintiff's customers' buying habits, product needs, the intervals of purchasing and the identity of the account's purchasing agent. The Plaintiff has in his possession the original orders submitted on all accounts and, in addition, my daily analysis sheets which also indicate the purchasing history and buying habits of each customer.

5. Plaintiff also maintains that I am infringing upon its good will because the names of some of my products are similar to the names of products sold by Plaintiff. There may be a similarity, but the names are not so similar as to confuse the public or leave the impression in any individual's mind that the products I sell are in any way associated with Plaintiff's products. In addition, Plaintiff would have the Court believe that its product, SS-25 is a name which

it devised itself. The "SS" name is a standard in the industry which is an abbreviation for "Safety Solvent" which is a product found in the products lines of every manufacturer in this industry.

6. Set forth in Exhibit "C" is copy of a letter which is typical of many other letters evidencing the one-half freight arrangement I had with the Plaintiff.

7. Set forth as Exhibit "D" is a copy of a letter which evidences the vacation bonus arrangement with Plaintiff and reflects that said bonus amounts to approximately one (1%) per cent of gross sales per year.

8. Plaintiff maintains that product information and training which I received was confidential and of a highly technical nature. All the product information and training that I received from Plaintiff from time to time was nothing more than a reflection of information printed on the labels found on each product or information which would be obvious to anyone. (Attached hereto as Exhibit "E" is a copy of a typical product label, as Exhibit "F" a typical "confidential product data" and as Exhibit "G", the pamphlet "Gears of Selling" which Plaintiff maintains is a document setting forth confidential information regarding the method of its sales). Demonstration information amounted to nothing more than suggesting, for example, that salesmen spray a cleaner on a dirty surface and wipe it to "demonstrate" to the prospective

customer that the product works. The Plaintiff may have had visual aids available to its employees; however, their use is highly impractical in this type of a job where the emphasis is on selling as many different customers in a limited period of time as possible.

Melvin R. Waldman

Melvin R. Waldman

Sworn to before me this
10th day of June, 1975.

Gloria M. Edmund

Notary Public, State of New York

GLORIA M EDMUND
Notary Public in the State of New York
Qualified in Albany County
My Commission Expires March 30, 1976

SALES REPRESENTATIVE M. R. Waldman

COMMISSION STATEMENT

216a

MONTH ENDING February 29, 1968

EXHIBIT "A"

DEBIT BALANCE AS OF JANUARY 31, 1968

CHARGES:

Advertising Novelties 149.60

Misc. Chgs. or Cr. (—) .....

Checks Issued:

Check No.	AMOUNT

Total Checks .....

TOTAL CHARGES THIS MONTH 149.60

NET CHARGES TO DATE 149.60

CREDITS:

Gross Commissions .....
Delinquent Payments .....
Commission Credits .....
Other Credits .....
Less: Spray Charges & Sales Aids ..... 37.00—
Less: Freight Charges .....
Less: Comm. & Frt. On Returns .....
Less: Delinquent Charges .....

Net Commission Earned ..... 37.00—

Less: FICA Tax .....
Less: Federal Withholding Tax .....
Less: State Withholding Tax .....
Less: Local Withholding Tax .....
Total Taxes Withheld .....

Net Credits For This Month ..... 37.00—

DEBIT BALANCE AS OF FEBRUARY 29, 1968 112.60

Estimate Of Pending Orders

Last Month's Estimate .....
Plus: This Month's Sales .....
Less: Gross Billing This Month .....
Estimate Of Orders Still Pending .....

Actual Audit Count Of Pending Orders .....

FILE

FS 5 806

EXHIBIT "A"

57 SALES REPRESENTATIVE [redacted] 2311

217a

COMMISSION STATEMENT

MONTH ENDING MARCH 31, 1962

DEBIT BALANCE AS OF FEBRUARY 28, 1962 — 135.60

CHARGES:

Advertising Novelties	37.00	
Misc. Chgs. or Cr. (–)		

Checks Issued:

Check No.	AMOUNT
60579	200.00
61642	200.00
62991	200.00
64171	200.00

Total Checks	800.00	
TOTAL CHARGES THIS MONTH		837.00
NET CHARGES TO DATE		1,073.60

CREDITS:

Gross Commissions	579.93	
Delinquent Payments		
Commission Credits		
Other Credits		
Less: Spray Charges & Sales Aids	12.75–	
Less: Freight Charges		
Less: Comm. & Frt. On Returns		
Less: Delinquent Charges		
Net Commission Earned	567.18	
Less: FICA Tax		
Less: Federal Withholding Tax		
Less: State Withholding Tax		
Less: Local Withholding Tax		
Total Taxes Withheld		
Net Credits For This Month		567.18

DEBIT BALANCE AS OF MARCH 31, 1962 — 506.42

Estimate Of Pending Orders

Last Month's Estimate	
Plus: This Month's Sales	5,339.09
Less: Gross Billing This Month	2,143.85–
Estimate Of Orders Still Pending	3,195.15
Actual Audit Count Of Pending Orders	

FILE

EXHIBIT "7"

57 SALES REPRESENTATIVE M R WALDMAN 2331

218a

COMMISSION STATEMENT

MONTH ENDING APRIL 30, 1968

DEBIT BALANCE AS OF MARCH 31, 1968 — 506.42

CHARGES:

Advertising Novelties — 5.60-

Misc. Chgs. or Cr. (–)

Checks Issued:

Check No.	AMOUNT
65328	200.00
66560	200.00
67724	200.00
68855	200.00

Total Checks — 800.00

TOTAL CHARGES THIS MONTH — 794.40

NET CHARGES TO DATE — 1,300.82

CREDITS:

Gross Commissions — 2,055.52

Delinquent Payments

Commission Credits

Other Credits

Less: Spray Charges & Sales Aids — 94.90-

Less: Freight Charges

Less: Comm. & Frt. On Returns

Less: Delinquent Charges

Net Commission Earned — 1,960.62

Less: FICA Tax

Less: Federal Withholding Tax

Less: State Withholding Tax

Less: Local Withholding Tax

Total Taxes Withheld

Net Credits For This Month — 1,960.62

CREDIT BALANCE AS OF APRIL 30, 1968 — 659.30-

Estimate Of Pending Orders

Last Month's Estimate — 3,198.15

Plus: This Month's Sales — 5,193.00

Less: Gross Billing This Month — 6,753.30-

Estimate Of Orders Still Pending — 1,637.85

Actual Audit Count Of Pending Orders — 547.00

FILE

F 219a

SALES REPRESENTATIVE [illegible]

COMMISSION STATEMENT

MONTH ENDING [illegible]

[illegible] BALANCE AS OF [illegible] [illegible]

CHARGES:

Advertising Novelties.....

Misc. Chgs. or Cr. (–).....

Checks Issued:

Check No.	AMOUNT
[illegible]	200.00
[illegible]	200.00
[illegible]	200.00
[illegible]	200.00
[illegible]	200.00
[illegible]	559.20

Total Checks.....

TOTAL CHARGES THIS MONTH.....

NET CHARGES TO DATE.....

CREDITS:

Gross Commissions.....

Delinquent Payments.....

Commission Credits.....

Other Credits.....

Less: Spray Charges & Sales Aids.....

Less: Freight Charges.....

Less: Comm. & Frt. On Returns.....

Less: Delinquent Charges.....

Net Commission Earned.....

Less: FICA Tax.....

Less: Federal Withholding Tax.....

Less: State Withholding Tax.....

Less: Local Withholding Tax.....

Total Taxes Withheld.....

Net Credits For This Month.....

[illegible] BALANCE AS OF [illegible]

Estimate Of Pending Orders

Last Month's Estimate.....

Plus: This Month's Sales.....

Less: Gross Billing This Month.....

Estimate Of Orders Still Pending.....

Actual Audit Count Of Pending Orders.....

FILE

RSS 806

MEMO

220a

EXHIBIT "B"

TO: Paul Petzinski | DEPT.-LOCATION: Dallas

FROM: Adam Silvera | DEPT.-LOCATION: N.Y.

SUBJECT: Mel Waldman # 2381 | DATE: 4-17-

MESSAGE:

Paul.

Please credit Mel Waldman's # 2381 statement with $140 for two days training with Ben Sunila 4/16 + 4/17

Thanks
Adam Silvera

ORIGINATOR - DO NOT WRITE BELOW THIS LINE | SIGNED

REPLY:

DEPT.-LOCATION | SIGNED | DATE

SEND PARTS 1 AND 3 WITH CARBON INTACT - PART 3 WILL BE RETURNED WITH REPLY

FORM 1-3

DETACH AND FILE FOR FOLLOW-UP

WRITER'S

EXHIBIT "B"

221a

MEMO

TO Paul Petraeli — DEPT. LOCATION Comm. Welfare N.Y.

FROM Helen Steiner — DATE 11-2-

SUBJECT Training Credit

MESSAGE: Paul.

Please see that M. Waldman receives 30 hours training credit. He spent 11/12 - R. Hessler in Harlem N.Y.

Thanks

Helen Steiner

Ok. Hal Kuriel

ORIGINATOR - DO NOT WRITE BELOW THIS LINE — SIGNED

REPLY:

DEPT.-LOCATION — SIGNED — DATE

SEND PARTS 1 AND 3 WITH CARBON INTACT - PART 3 WILL BE RETURNED WITH REPLY

FORM 1-3

WRI

DETACH AND FILE FOR FOLLOW-UP

222a

MEMO

Bob Hanson — Allen

Helen Waldman

DEPT. LOCATION: Ass't - Albany N.Y.

DATE: 3-1-71

SUBJECT: Waldman # 2381

MESSAGE:

Bob -

Please send M. Waldman # 238 an expense reimbursement check for $10.18 for expenses incurred 2/15 - 2/18/71 while testing P. Reeder in Syracuse - N.Y.

Thanks.

Helen Waldman

SIGNED

ORIGINATOR - DO NOT WRITE BELOW THIS LINE

REPLY:

SIGNED

DATE

DEPT.-LOCATION

SEND PARTS 1 AND 3 WITH CARBON INTACT - PART 3 WILL BE RETURNED WITH REPLY

WRITER

FORM 1-3

DETACH AND FILE FOR FOLLOW-UP

223a

f 16.52

EXPENSES DURING TRAINING (G-14)

NAME Mel Waldman PERIOD COVERED 3/15, 16, 17, 18

MAILING ADDRESS 11 Vatrale Ln Loudonville, N.Y. 12211

WORKED WITH Dick Reardon TERRITORY Oswego County.

	Sun	Mon	Tue	Wed	Thur	Fri	Sat	Total
Transportation (1)	290 miles 8¢/mile				23.20			
Meals (include tip):								
Breakfast			1.75	1.75	1.75			
Lunch		1.75	1.75	1.75	1.75			
Supper		3.50	10.45	X	X			
Lodging (2)		14.54	14.54	14.91				
Baggage Tips								
Telephone		2.12	3.57	2.57				
Taxi								
Other (describe):								
Total	$	$23.21	$32.56	$20.91	$26.70	$	$	$

Total	$103.18
Less Advance Received (if any)	$
Amount Due	

(1) Include amounts for train, plane or auto. Attach supporting receipts.

(2) Attach hotel bill.

Mel Waldman
SALESMAN'S SIGNATURE

Sales Manager's Approval

NAT Chemsearch
Company Charged

MEMO

224a

TO Paul Wallace

DEPT. VI.

FROM Helen V. Lemassena

DATE 6-

SUBJECT Mel Waldman #=2381

MESSAGE:

Waldman has been given three days training leave by Lt Irwin Folsom in Virginia Beach June 3-5. O Case Folsom will credit his 90 tha allowance.

Thanks
Helen Lee

SIGNED

ORIGINATOR - DO NOT WRITE BELOW THIS LINE

REPLY:

SIGNED

DEPT.-LOCATION

SEND PARTS 1 AND 3 WITH CARBON INTACT - PART 3 WILL BE RETURNED WITH REPLY

FORM 1-3

DETACH AND FILE FOR FOLLOW-UP

EXHIBIT "C"

MEMO

FILE

Glen Wagard	DEPT./LOCATIC Comm Dallas
FROM Helen Sleeman	DEPT./LOCATION N.Y.
SUBJECT Mel Waldman #2381	DATE 5-5-71

MESSAGE:

Glen

Per our arrangement with Waldman re. on freight adjustment please see that he is credited with 1/2 the freight on the following ord # 121 @ 8.05 #123+124 @ 36.48 #175 8.53 #178 @ 15.16 #4 @ 27.34. these total out to $103.61. Credit due Waldman SIGNED $51.80

ORIGINATOR - DO NOT WRITE BELOW THIS LINE

REPLY:

Thanks
Helen Sleeman

DEPT.-LOCATION	SIGNED	DATE

SEND PARTS 1 AND 3 WITH CARBON INTACT - PART 3 WILL BE RETURNED WITH REPLY

FORM 1-3

DETACH AND FILE FOR FOLLOW-UP

WRITER'S C

EXHIBIT "C"

EXHIBIT "D"

MEMO

Gay Dennis	DEPT.-LOCATION Payroll Dept. - Texas
Ralph Young	DEPT.-LOCATION Hackensack
SUBJECT Mel Waldman #2381	DATE 3/4/7

MESSAGE:

Dear Gay:

Please send Mel Waldman a $2,000 check instead of the trip which he won for writing over $200,000 in volume in 1973.

Thanks for your help.

Very best regards,

Ralph Young

ORIGINATOR - DO NOT WRITE BELOW THIS LINE SIGNED

REPLY:

OK RS

DEPT.-LOCATION SIGNED DATE

SEND PARTS 1 AND 2 WITH CARBON INTACT - PART 3 WILL BE RETURNED WITH REPLY

FORM 1-3

DETACH AND FILE FOR FOLLOW-UP WRITER'S CC

EXHIBIT "D"

DANGER, CAUSTIC
May be fatal if swallowed.
KEEP OUT OF REACH
OF CHILDREN.

DIRECTIONS

For disinfecting toilet bowls – Do not remove water from bowl. Pour 3 ounces Scoot Foamy Bowl Cleaner on the inside of bowl. Spread evenly over the entire surface covering the entire bowl rim and seat and around the water outlet. To remove heavy encrustations scrub with a brush or sponge off. Leave on the surface for 8 to 10 minutes and flush or rinse off. Wipe the outer rim and seat with a damp cloth or sponge.

Toilet tanks should be cleaned as needed by pouring 3 or 4 ounces into the tank, agitating with a mop and rinsing.

Urinals – Pour on the wall and spread over the entire surface with a mop. Allow to remain on the surface for 8 or 10 minutes and rinse. Remove the trap screen, pour in one ounce of Scoot Foamy Bowl Cleaner and swab the inside of the pipe. Replace strainer and flush urinal.

PRINTED IN U.S.A.

NATIONAL CHEMSEARCH ®

SCOOT

FOAMY BOWL CLEANER

DANGER
POISON

KEEP OUT OF REACH OF CHILDREN
(See right panel for additional precautions.)

DEODORIZES • CLEANS • DISINFECTS

ACTIVE INGREDIENTS:
Hydrochloric Acid
Oxalic Acid
N-alkyl (50% C_{14}, 30% C_{16}, 5% C_{12}, 5% C_{18}) Dimethyl benzyl ammonium chlorides
N-alkyl (50% C_{12}, 30% C_{14}, 17% C_{16}, 3% C_{18}) Dimethyl ethylbenzyl ammonium chloride

INERT INGREDIENTS: 78.5%*
Water
Nonylphenoxypoly (ethyleneoxy) ethanol
Rosin amine D acetate
Essential oils

*Includes inhibitor, cleaning compounds and emulsifiers.

DANGER, CAUSTIC
May be fatal if swallowed.
KEEP OUT OF REACH
OF CHILDREN.

Applicator Statement: [illegible]

First Aid: [illegible]

Precautionary Statements: [illegible]

Storage and Disposal: [illegible]

EPA Reg. No. 1720-131

227a

EXHIBIT "E"

EXHIBIT "E"

Confidential Product Data: 228a

YIELD AEROSOL JET SPRAY EXHIBIT "F"

DESCRIPTION:

Yield is a highly concentrated chemical packaged in a handy aerosol container designed specifically to free rusty nuts, bolts, and fittings.

WHERE TO USE:

1. Water departments (underground bolts), etc.
2. Machine shops
3. Textile mills
4. Plumbers
5. Asphalt mixers
6. Scaffold companies
7. Maintenance shops of all kinds
8. Automotive shops
9. Farm implement companies
10. Wherever it is necessary to free rusty nuts or bolts

DEMONSTRATION:

1. Spray any rusted or corroded nut or bolt; allow to penetrate and then unscrew.
2. Show that it can be sprayed upward. (Other products make a mess and drop back on face when lying on back and working under trucks, etc.)

PRODUCT BENEFITS:

1. Loosens rust
2. Penetrates and frees nuts, bolts and fittings.
3. Helps prevent further corrosion and rust.

Confidential Product Data:

YIELD AEROSOL JET SPRAY

PRODUCT BENEFITS: (continued)

4. Cleans grease, dust, dirt and sludge
5. Penetrates into the threads, even when countersunk
6. Saves time and labor
7. Does not evaporate as quickly as other similar products
8. Safe to use - will not affect the skin when used as directed.
9. Has no unpleasant odor
10. Economical because it does not damage the threads that are being loosened.
11. Aerosol spray reaches even "hard-to-get-to" areas.

POTENTIAL USERS:

1. Water departments
2. Sewage plants
3. Street departments
4. Industrial plants
5. Commercial accounts
6. Schools
7. Automotive accounts
8. Construction industry
9. Maintenance Shops
10. Cement hauling companies

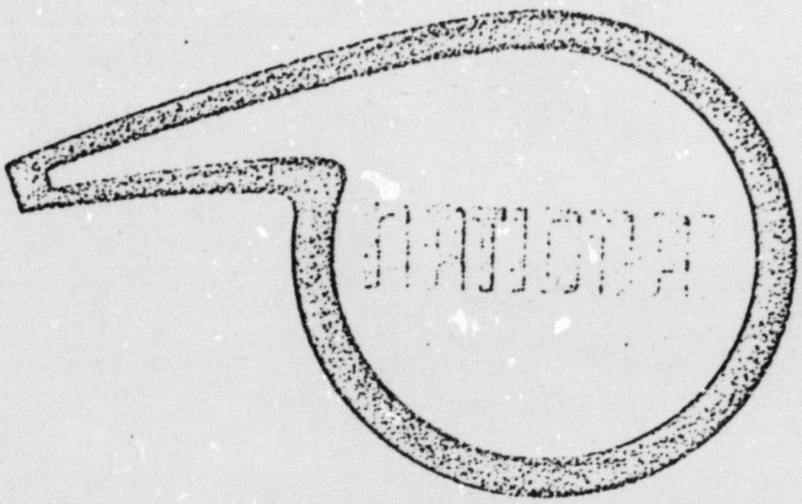
Confidential Product Data:

YIELD AEROSOL JET SPRAY

PACKAGING AND PRICES:

(Aerosol Containers)	
8 dozen per case	Consult current price list
4 dozen per 1/2 case	Consult current price list
2 dozen per 1/4 case	Consult current price list

EXHIBIT "G"



CHEMSEARCH®

GEARS OF SELLING

EXHIBIT "G"

NATIONAL CHEMSEARCH ®

A word about our Company - - -

Since our birth in 1919, we have attributed our success to:

1. The financial success of our individual salesmen.
2. The consistent high quality of our products.
3. The maintenance of a large chemical research staff.
4. The satisfaction of our customers.

"The stars" of the National team are its superior salesmen. National salesmen earn excellent incomes and have a sense of accomplishment since they offer products that make life better and safer, and serve almost every business. National sells nothing for resale, but sells bulk chemicals packaged in drums directly to the ultimate user.

NATIONAL'S GROWTH - - -

National's growth has developed with its dynamic chemical research program. Its many products are nationally advertised in trade publications. National maintains its research laboratories and home office in Dallas, Texas. Branch Offices are located in St. Louis and New York City and a West Coast Office will soon be established. Our future program includes expansion of our plant, our branches, our product line, our research, and our sales organization to keep pace with expanding demand.

The advancement in the chemical industry is never ending. Our prospects are unlimited. Since our success is due to our research and our sales department, those who are members of the sales organization are rewarded handsomely .

Printed
3-15-68

YOUR REWARD FOR SUCCESS IS:

1. FINANCIAL SECURITY for you and your family resulting from extra high earnings.

2. BEING YOUR OWN BOSS is your own territory.

3. The knowledge that you are successful in a DEPRESSION proof business. Industries, hospitals and institutions budget as much for sanitation and maintenance in bad times as in good. Industry must maintain their equipment and plants even when production is slow.

4. Participation in sickness and accident insurance guaranteeing a fixed income for a long period of time if you cannot work as a result of illness or accident.

5. Participation in an excellent group life insurance program.

6. National provides you at no cost complete hospital and surgical benefits plus a major medical policy to cover a long and expensive illness.

7. Association with an organization that provides you with the research, the products, the training, the know how, and the merchandising to earn a handsome income.

8. A profit sharing plan that helps to secure your hopes and aspirations for the future.



It's Monday morning and your alarm has just rung -- 7:00 a.m. You have plenty of time before your first call because last night you planned your work for today.

Selling is more than showing your product and asking for orders. It is a way of life. It is different from any other occupation, since your earnings depend entirely on your skill and hard work. Your foresight in planning your work makes you money by saving time. In selling, time is money. Your sales today will also be larger if you spend evenings studying your products and improving your sales presentations.

Certain basic techniques of selling National products are described here. These are for the beginner, as well as the seasoned salesman -- for a professional salesman is constantly searching for new ways to improve himself. This booklet is the key that will open your door to success. If you will master the ideas and techniques and apply them - 5 days a week, you will easily climb the ladder of sales success and personal happiness.

The products manufactured by National Chemsearch are of the finest quality. Every business or institution in America is using your product or a similar one. You will find your prices are competitive, and your commissions are among the highest in the industry. National's chemicals have been accepted by the public since 1919.

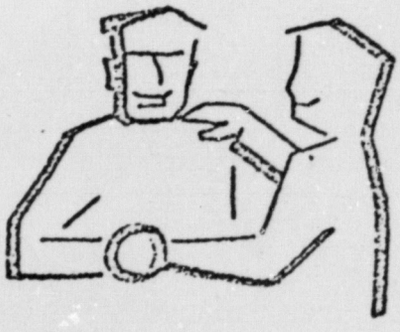
Master the following pages -- they will mean much to your success.



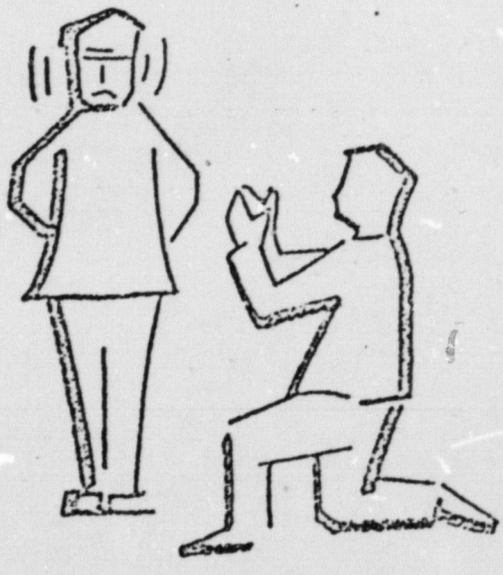
KNOW all you can about your products (there are over 200)



WORK from 10 to 16 accounts every day.



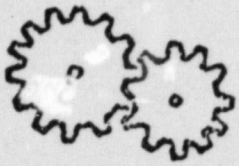
MAKE FRIENDS with as many accounts as you can.



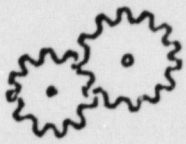
NEVER make a call without trying to make a sale. You should sell at least 3 orders a day.



Keep your customers your friends by providing extra ordinary service.



THE GEARS OF SELLING



Before automatic gear shifting in cars, there were three forward gears, a neutral and a reverse. In order to reach your destination you had to start your car in neutral, then shift from first to second to third. In every sale, there are three gears that must be used in order to complete the sale.

Neutral Gear: This could be called the pre-approach. It is the time before you make your call when you collect your thoughts, plan your strategy, and get your samples and literature in order.

1st Gear . . . . . The Open or Introduction

2nd Gear . . . . . Presentation of your products

3rd Gear . . . . . Closing the sale

Reverse Gear:

When you fail to get an order, it is often smart to back up and re-emphasize second gear. (What this product can do for your customer. Then try another shift into third gear, and ask for at least an INTRODUCTORY ORDER.

FIRST GEAR: You will introduce yourself at least 12 or 15 times each day to potential customers. You can pave the way for an easier introduction by preparing yourself in advance. You should be neat and well groomed. Keep yourself personally clean -- your body, mouth and fingernails. Wear a coat and tie. In certain areas where you are well known, sport shirts may be acceptable during the summer months. Always look successful -- neither you nor anyone else likes to buy from a failure. Good appearance costs very little -- but it will pay big dividends.

"Smile, darn you Smile." This favorite song of the 1920's should be your by-word, everytime you introduce yourself. A man who smiles is considered a bearer of glad tidings -- the "frowner" may be the income tax collector. Your prospect will be glad to see a smiling face.

Look your prospect straight in the eye and give him a firm handshake. The rest of the introduction must be done with work and words.

Wherever possible, learn the man's name before calling on him. This is not absolutely necessary, but his name can be easily learned by asking someone who works in the same building. Just ask, "Who is responsible for purchasing the maintenance supplies, such as wax, floor cleaners, etc?" It is as easy as that. In a city you could stop at City Hall and ask the City Clerk or a secretary who buys for the various departments.

You must always control the interview. People buy only in the environment where they are used to doing business. If a potential buyer comes out to greet you in his outer office, suggest that you go to his office to talk. (He signs orders in his office - not in the hallway) Be gently insistant that your prospect see you in a seated position in his or her office. Often, the best method is to pick up your sample case, and start walking to his desk saying, "I have something here you will want to see." His normal instinct will be to follow you.

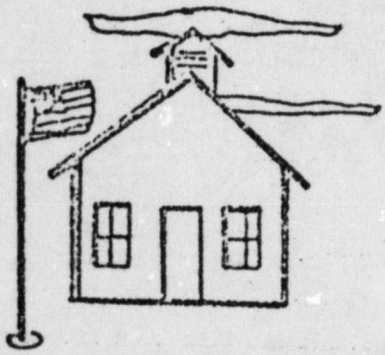
HINT: Before shaking hands with a customer, first put your case on the floor. (You may need your free hand to pat him on the back.)

Always carry your sample case - loaded with "ammunition". Your ammunition is demonstratable products, such as cleaners, bombs, etc., catalogs, order book, and advertising novelties such as hand lotion, ball pens, knives, etc. Always keep in mind that you have only one reason to be in your customer's presence.

This reason exists on every call. IT IS ONLY TO SELL YOUR PRODUCT TODAY; so that you and your customer will both benefit from the sale. You will call on every type of customer. On the following pages are a few typical examples of introductions.



SOME TYPICAL INTRODUCTIONS TO:



A SCHOOL SUPERINTENDENT

1. (As you are walking into his office) "Mr. Jones, you certainly have a beautiful building here. When was it built? Incidentally, how long have you been in the school business?" (Use this only if it is a new and beautiful building.)

   In this type of introduction, the customer is:

   A. Sincerely complimented.

   B. Asked to tell you something about himself, that instinctively makes him like you. The more he talks of himself, the more he will think of you for being interested.

   C. You have not mentioned your Company or product, hence you have disarmed his sales resistance and greeted him as a friend.

* * *

2. "Mr. Jones, you have a beautif gym here. Did you have a good basketball season?"

* * *

3. "Hello, Mr. Jones. You school men are the most over-worked fellows I know. You have to be an administrator, teacher, aid to parents, architect, insurance man, and psychologist. How do you do it all?"

A. Everyone likes to feel he is doing a good job and will welcome the opportunity to tell you about it and have you sympathize with his problems. Actually, schoolmen are overworked and must have a wide knowledge of many things.

B. Another question showing personal interest.

C. Again, you have not mentioned your company, so his natural sales resistance does not come into action.

* * *

4. "How are you, Mr. Jones, I'm Sam Smith with National Chemsearch. You have a beautiful school; were you superintendent during its construction?"

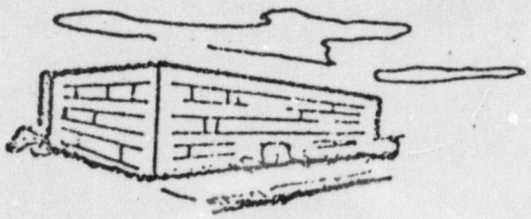
A. This is a more formal introduction as you used the Company name. However, you sidetracked the formality by paying a sincere compliment and giving your customer a chance to talk about his school.

* * *

5. "Hello, Mr. Customer, I'm Sam Smith with National. We carry a complete line of janitor supplies."

Customer: "Don't need any. You're the fourth fellow I've seen this week. How do all you fellows make a living?" (*)

(*) Use this approach and <u>you won't sell</u>.



TO HOSPITALS:

Use an approach similar to the school approach.

Phrases such as "How did you get in hospital work?" or "You certainly have a fine hospital." or "How many beds do you have?"

In calling on hospitals, you often must get permission from the administrator or business manager to call on the housekeeper. If the housekeeper orders, it is well to give compliments on his or her work, if a compliment is in order, or sympathize with her labor problems.

HOTELS: Similar to hospitals. Sometimes the manager orders in a hotel and sometimes the engineer, the housekeeper or the chef for the restaurant. Sometimes all of them buy. Get your information from the manager.

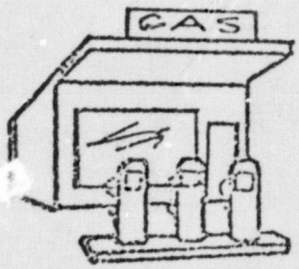
INDUSTRIAL PLANTS:

To purchasing agents - "It always amazes me how a man can keep track of buying so many different items. How in the world do you do it?"

TO THE MAINTENANCE FOREMAN:

(You have presented a card, and he knows who you are and whom you represent.) "Mr. Ricks, I always enjoy meeting a man in your position. I don't see how you have time to look after your labor force, watch the man hours and keep the bosses happy at the same time."

(A) He will answer this, because he knows you are aware of his problems. It also opens an avenue for you to later discuss your materials that save man hours and money.



TO AUTOMOTIVE CUSTOMERS AND FILLING STATIONS:

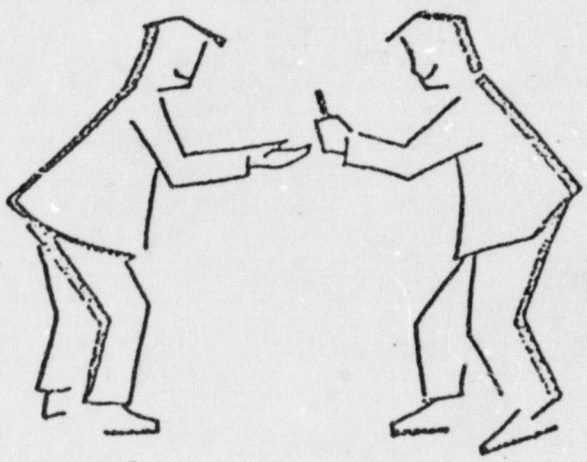
"Hi, Mr. Jones. I've got something here to show you that's going to save you some money." ..... (The profit approach)

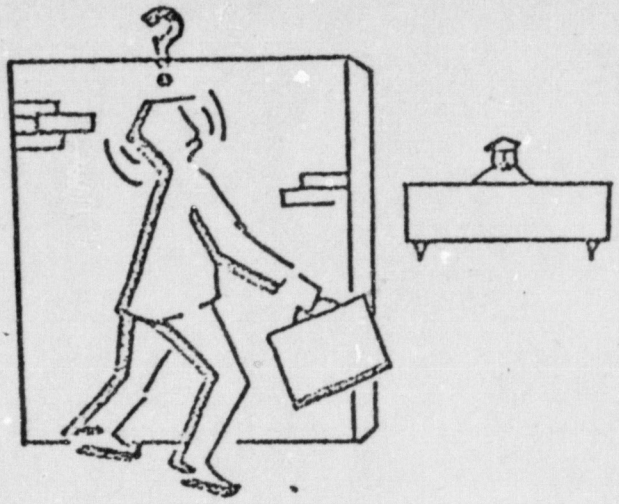
GARAGES:

"Hello, Mr. Smith, I've got something here I want to show you. You can keep this tool kit in the glove compartment of your car. Notice, that is has a Phillips Screw Drive, along with the other two conventional screw drivers. I want you to have this with my compliments." .....(Using an advertising novelty to get an interview.)

* * *

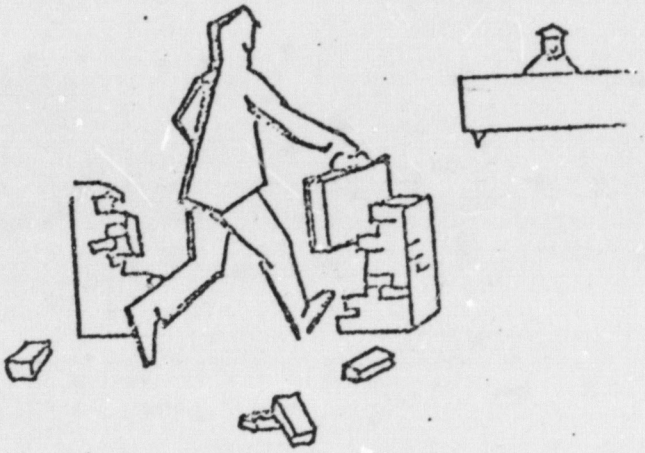
Often you get a busy man to relax and listen to your sales story by properly presenting an advertising novelty to him. This novelty will make him forget about his business problems. He relaxes his resistance to your approach since his mind concentrates on a ball pen or a key ring rather than on his personal problems.





Every buyer throws up a mental "wall of resistance" to every new salesman.

The introductions that you have read are just a few that will quickly break through this "wall". By using these methods, you will be able to see how your customer can be made to relax so that he will favorably receive your sales presentation.



Assume you have accomplished the first phase of your introduction. It is then important to find a mutual field of interest between you and your prospect. Learn to be interested in your prospect's family, hobbies and business problems. To find his primary interes ask leading questions such as:

1. How many children do you have?
2. Do you do much fishing?
3. Are you going to see any college football games this year?
4. Ask a question about some particular business problem that you feel your prospect would like to talk about.

Wherever possible, let your customer talk a few minutes. The most successful salesmen are the "best askers of questions" and the "best listeners".

Now is the time to shift from first to second gear. The shifting action is sometimes called "The Transition" because you are shifting into your real selling effort. You must develop certain phrases, words and sentences that will smoothly develop your shift. For example:

> "Mr. Prospect, my Company has been manufacturing industrial and maintenance chemicals for over thirty years. Notice the pictures in the catalog of modern laboratory facilities. You will be interested to know that our chemists are constantly striving to develop new products to help solve your maintenance problems. Here is a product that has been developed in our laboratory and proved in actual use. I know you will be interested in how it can help you in your operation."

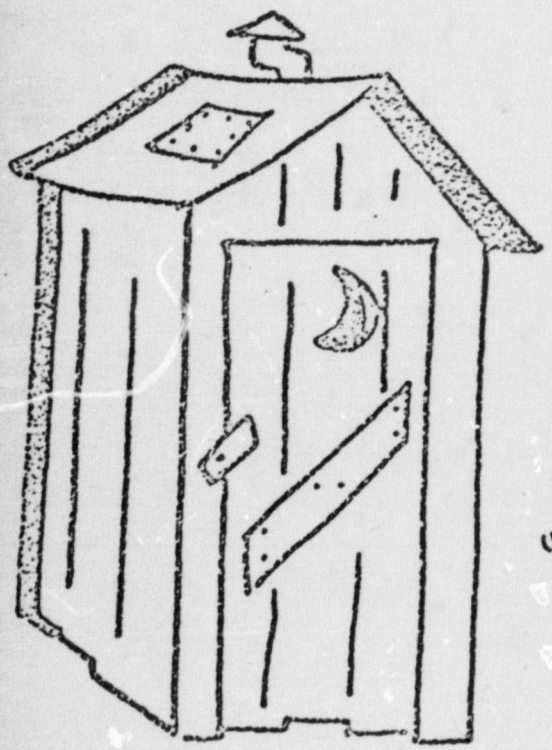
SECOND GEAR: (PRESENTING YOUR PRODUCT AND CREATING THE NEED FOR YOUR PRODUCT)

You have to give a man a reason to buy your product. You must convince your prospect that he needs your product because it fills a particular need the prospect has -- you must convince your prospect he has a problem, and that your product is the best solution for the problem.

For example: A man with $1,000,000.00 life insurance can be sold more insurance if he is convinced he needs it to protect his estate. A Buick owner can be sold a Cadillac if the Buick owner is convinced he will get more business because he will have more prestige. Conversely, the Cadillac owner can be sold a Buick, if he is convinced he is losing business because his customers don't want to buy from a rich man who does not need his business.

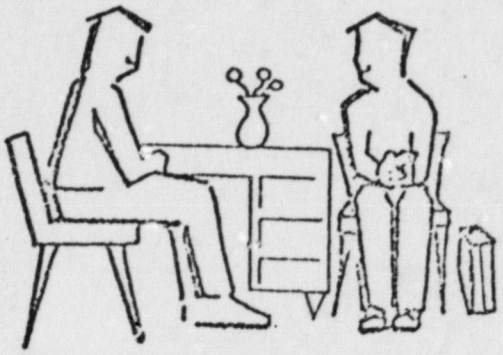
If you have any product to sell, make up your mind to convince your prospect WHY he needs YOUR products.

Several examples follow:

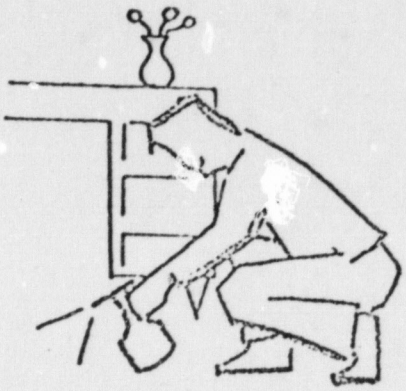


PEOPLE WERE SATISFIED WITH THIS BEFORE A SALESMAN SHOWED THE "REASON WHY" OF SOMETHING BETTER!

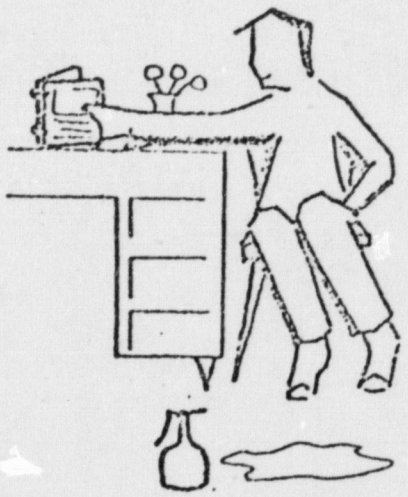
CHEMSEARCH CONCENTRATE



1. Since you are responsible for the sanitation of your building, you will want to see a new theory we have developed in floor cleaning. A clean floor is the first step toward a good building appearance as well as sanitation and Chemsearch, our superior cleaner, does your cleaning job better and faster. (*)



2. You will notice I am going to spray a small amount of Chemsearch on your floors. This sprayer is for spot work on walls and woodwork - actually Chemsearch may be used in your regular mop buckets or sprayed on your floor in a 3 gallon Chemsearch sprayer. Chemsearch diluted according to directions, may be used for normal cleaning of floors, woodwork, and windows. In greater concentrations, it will also remove old wax from the floor. I'm going to agitate the solution on your floor with my fingers to show you there is nothing that will hurt your floors or my skin.



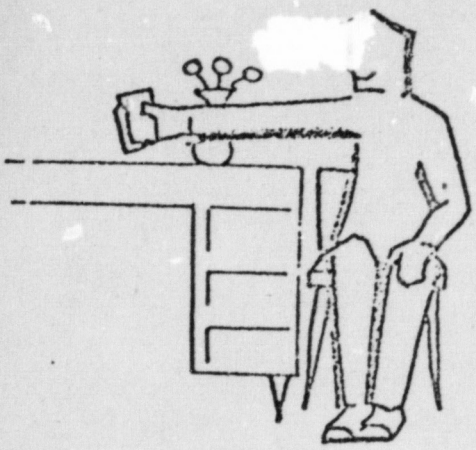
3. While we have been talking, Chemsearch is penetrating the pores of your floor and lifting the dirt into solution. More than that, the dirt is being uniformly suspended in the solution so it may be entirely removed by picking up the solution with your wet mop. Notice, in my catalog, how Chemsearch holds dirt in suspension, while most cleaners allow half the grime to be re-deposited on the surface.

*This is a transition sentence bridging the gap between the "Open" and the "creating the need" phase.

CHEMSEARCH CONCENTRATE



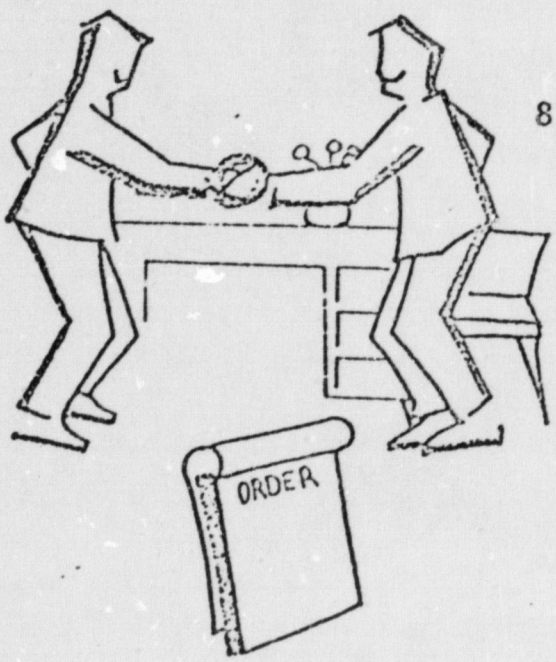
4. Now I'm going to remove the solution by wiping it up with this cloth. After the dampness evaporates I will show you a floor clean enough to eat your eggs on.



5. With my white pocket handkerchief, I'll wipe the cleaned spot. Look, absolutely no dirt. Your floor is "white handkerchief clean".

6. Now watch when I wipe the handkerchief on the part of the floor not cleaned with Chemsearch.

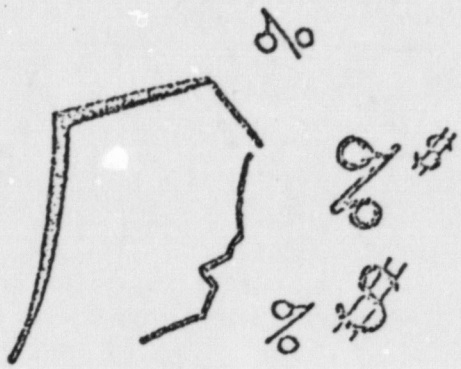
7. Here do this yourself so you can prove to yourself.



8. So that you can have the proper tools to spray Chemsearch we are furnishing at no charge the $10.95 Chemsearch 3 gallon sprayer with standard 55 gallon container. With a 35 gallon half size container, we are furnishing you with the Duz-All Sprayer for your walls, woodwork and spot work. You can see what an amazing cleaner Chemsearch is and I want you to order the size container and sprayer that will suit your needs.

WEAREVER WAX

WHAT TO DO

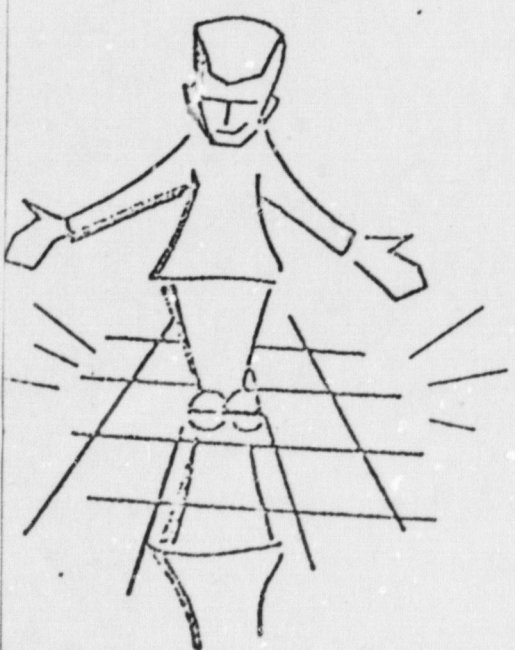


WHAT TO SAY

1. Every company like every individual is very proud of one accomplishment. Wearever is something we can justly be proud of because it will reduce your labor cost of floor waxing by 60% and your year end material cost by at least 30%.

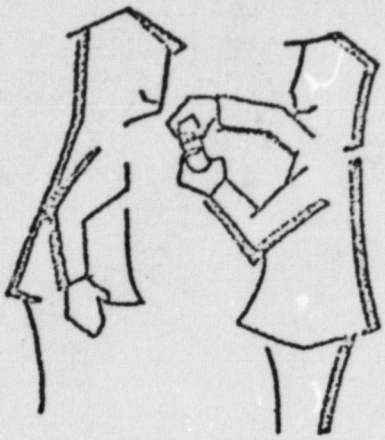


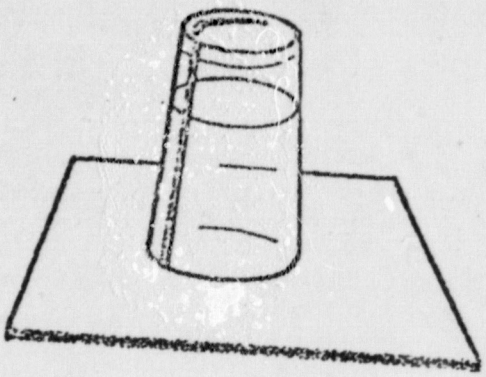
2. Of every dollar spent for maintenance, national statistics prove 95 cents is spent for labor. Wearever reduces your labor cost by staying beautiful on your floor up to 3 times longer than any wax we have tested.

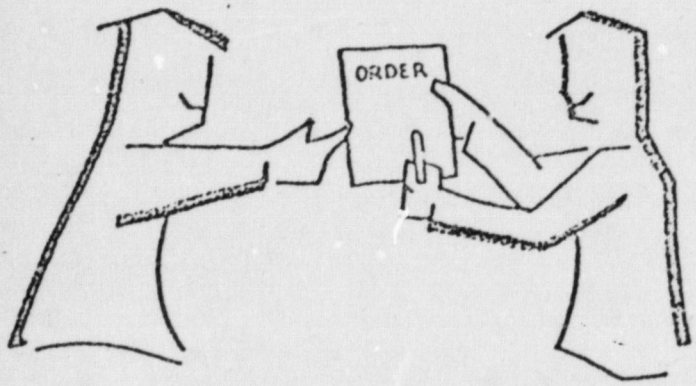


3. The secret of Wearever longer wearing quality is the manner in which it is made. Wearever contains a high percentage of solids, principally RICH PURE Carnauba, emulsifiers and levelling agents combined with water. The Carnauba gives Wax its life and hardness. The other chemicals are necessary to suspend Carnauba in solution, but they decrease the wearing of a wax surface in most waxes because they do not evaporate before the wax film is dry. So it is very important that a wax is properly formulated and constantly controlled during the manufacture.

WHAT TO DO







WHAT TO SAY

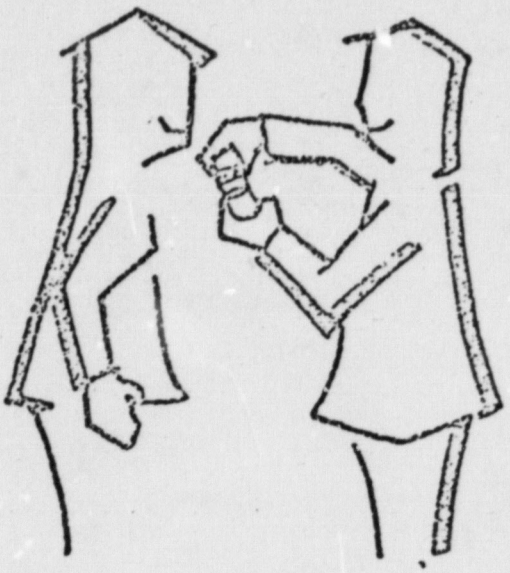
4. Wearever is so formulated that only the hard Carnauba stays on your floor. The emulsifiers and other chemicals evaporate at the same rate as water, leaving a hard, wear resistant lustrous surface.

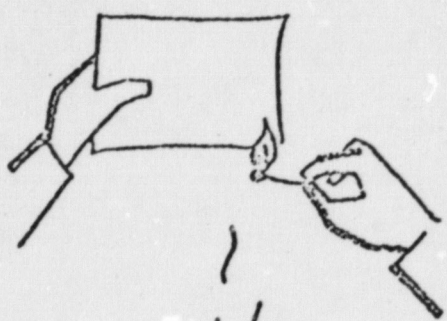
5. To prove that not only wear, but even water will not harm this pure wax surface, observe the effect when I invert this container of water on this panel waxed with Wearever. Although the water is on the surface for a few minutes during this demonstration, it would have no more effect on Wearever, if the water were on the surface 24 hours.

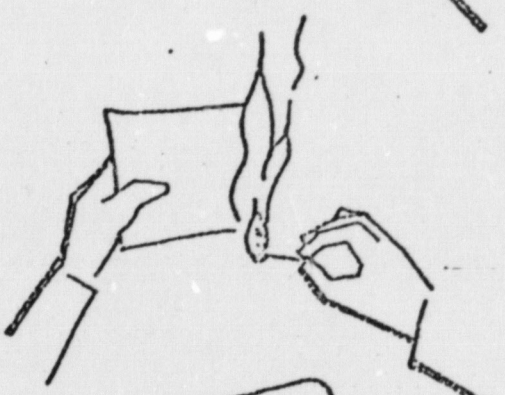
6. Although the initial cost per container is a little more than cheape waxes, Wearever is guaranteed to materially cut your over-all labor cost and wax cost, give you a safe, beautiful floor longer. We can discuss Wearever all day, but you won' be fair to me or to yourself until you try it.

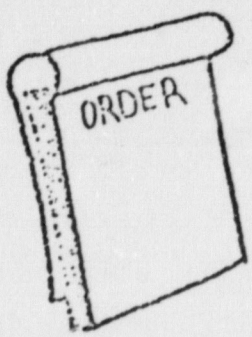
SANAPHENE

WHAT TO DO









WHAT TO SAY

1. Since you are responsible for the sanitation program and for the health of those who are in your building, I know you will be interested in an improved product for controlling all bacteria including the Staph Germ.

2. Most disinfectants such as Pine Oil are effective only against gram-negative bacteria. That means the other half of the bacteria population, the gram positive group, such as the diphtheria germs and others, are not affected.

3. Let's pretend that this object represents gram-negative germs and this one gram-positive. An entire bottle of pine or ordinary disinfectant will kill only one group of the grams. Less than a teaspoon of Sanaphene will kill both classes.

4. In addition, Sanaphene is non-combustible, creating no fire hazard.

5. Now that a material is available to you that frees your mind from sanitation worries, is safe, and has such a pleasant aroma, won't you list yourself among the more progressive school men (or what have you) and let me send you a drum today. Germs won't wait for us, so there is no time like the present to start on them.

* * *

After you have --

1. Made a friendly introduction - (Opened)

2. Created a need for your products (which we've done in the previous sales talks)

YOU MUST THEN SHIFT INTO THIRD GEAR AND ASK FOR AN ORDER OR CLOSE THE SALE.

A. You may simply ask for an order.

B. You may let your customer decide between two positive alternatives, for example: "Chemsearch is packed in 55 and 35 gallon containers. Would you prefer the full drum or the half drum?" Or, "We can have this arrive next week or the first of next month, which do you prefer?"

C. You may use the assumptive close: "I'm sure you have enough wax on hand now, but since you want to try my wax and since I may not be back before you run out, I'll just earmark this drum for delivery next month." Or, simply say, "You will thank me many times for introducing you to this product." Open your order book and say, "What address do you use for shipping?"

D. Impending Event: "This month only, you receive a $10.00 sprayer absolutely free with each drum. I'll mark it down now, so you can take advantage of this special offer."

E. Never force the customer to say, "Yes, I'll take the product." because it won't help you to try - no customer will ever say that.

* * *

Make it easy on yourself, and let the customer have your materials without forcing him to have to make a "yes or no" decision on whether to buy or not to buy.

The number one pitfall of new salesmen is the "put off" phrase. "When are you coming back?" Now there is one thing I can promise you, if you can't figure out a good answer that will eliminate the "stall", you will never see your prospect a second time.

buy a small amount now so you will see its worth and then you can thoroughly consider it for your yearly purchase.

OBJECTION:

I'm sure that is a fine product, but we just don't use it in our maintenance program.

ANSWER:

Mr. Jones, many of my regular customers for Washable Nu Lite are people who had never used this type of material. You can genuinely improve the appearance of your building by using this material, and at the same time reduce the cost of maintenance.

OBJECTION:

We've been buying from the same company for years.

ANSWER:

You are doing business with a fine company, Mr. Prospect. However, we have a new product that they do not hav[illegible] example here is_____.

OBJECTION:

We've been using the same product for years.

ANSWER:

The product that you are using is good, Mr. Prospect. A few years ago, there was nothing available that could do a better job for you, but you owe it to yourself to listen to my story.

OBJECTION:

I just don't have the time for you to show me your products. Maybe I will have a chance to see them some other time.

ANSWER:

I appreciate that, Mr. Prospect, but the time and money you can save by spending a few minutes with me now will be well worth your while..... or I can come back at your convenience.

The most obvious answer puts you right in your prospect's trap. If you say, "I'll be back in two months," he will say, "Fine, I'll consider your products then -- probably give you an order." This really means that your truthful answer puts you right out in the cold. Two months from now, you have to do the same selling job over, the prospect has forgotten you. He has bought from someone else and will say to you, "I'm going to buy this from you, when are you coming back?"

AND PROBABLY YOU NEVER WILL SELL HIM ! ! !

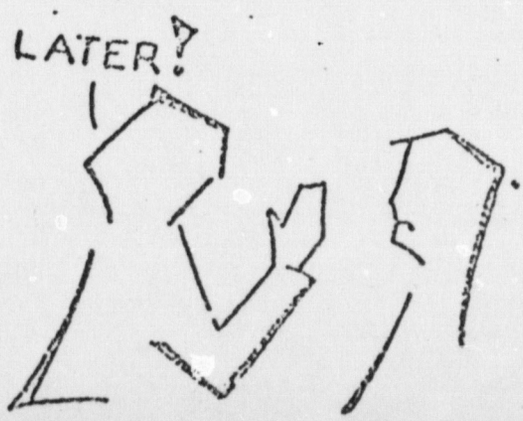
However, if you learn to answer his "stall" as follows, you will be a winner:

> "Sir, I will be back, and wish I could say just when, but my territory is so extensive it is impossible to say just when. But since you will run out of my product before I return, I don't want to be penalized by not being here on the right day - so with your permission I'll just put the product down for shipment so that it will be on hand when you run out, and you won't miss the opportunity of trying this product."

* * *

Re-read the above, it is most important. Another answer to "When are you coming back?" is "Everyone asks me that and unless I get a chance to let you see how good my product is now, I might never have the chance to come back." --

This should be a "kidding" type of answer but should be followed with another "strong" close.



SOME OBJECTIONS YOU WILL HEAR -- OFTEN!

1. Good janitor?
2. No money.
3. Buy once a year.
4. Don't use it.
5. Buying same company for years.
6. Buying same product for years (satisfied).
7. Too busy to see it.
8. Plenty on hand.
9. Fooled by too many salesmen.
10. Had four salesmen in today.
11. We buy local source or local delivery.
12. Price too high.
13. Leave me a sample and I'll think about it.
14. We buy from a member - or a local man.
15. I'm just a small user.
16. I'm satisfied.
17. Can't get my janitor to use it.
18. We have to take this up with the City Council.

OBJECTION:

We have had the same janitor for years. He is pretty old, and we cannot fire him, but he does not do the job. When I do buy new things for him, he does not use them.

ANSWER:

Mr. Prospect, you would be surprised, but that problem exists in most other schools. Let me ask you a question. Does your janitor complain that there is so much work to do that he cannot get to it all? Then sir, I can help you. With your permission, I would like to demonstrate this product to your janitor. He will quickly see that this product can save him time and also save you money. In other words, he can accomplish more work with less effort by using this product. Now, Mr. Prospect, I'm going to show this to your janitor, and if both of you approve, it will be here in a few days for him to start using.

OBJECTION:

That sound like a good product, but we just do not have any money. (Assuming this is a school superintendent.)

ANSWER:

If that is the only problem you have, Mr. Prospect, then there is not a thing to worry about. My Company has been serving schools since 1919 and we understand your monetary problems. We'll just send this out, and it won't be billed until next session. We have been doing this with institutions for years.

OBJECTION:

I wish you would have been here sooner, because we only buy once or twice a year.

ANSWER #1:

Mr. Prospect, many institutions buy in the same manner. While I'm here, there may be a few little odds and ends on which you might be running low. Let me show you through my catalog. There might be something here that you may need.

ANSWER #2:

Mr. Prospect, almost all schools buy in the same manner. Here is something that I know you don't have, because it is brand new. Here is how it works ----. Now, what I would like you to do is

OBJECTION:

That looks like a good product, but we have plenty on hand.

ANSWER:

Of course, you do, Mr. Prospect. As I already pointed out to you, this material has many advantages over ordinary products, but the true test of its merits is when you use it yourself. Try a small container of this material in part of your building. Compare it with the material you are now using and I am sure you will want to standardize on my product when you buy next time.

OBJECTION:

Every salesman that comes in here claims he has the best product. I have been fooled by too many of you.

ANSWER:

That may be true, but I'm not an ordinary salesman. One order is not going to make me rich or poor. What I want is your continued repeat business and I cannot get that unless you try a small container today.

OBJECTION:

You're the fifth salesman selling cleaning supplies that has been here today.

ANSWER:

There will probably be five more behind me, but I represent National. We are one of the few basic manufacturers and our laboratories have developed a product that is so important to you I know you will want to see it.

OBJECTION:

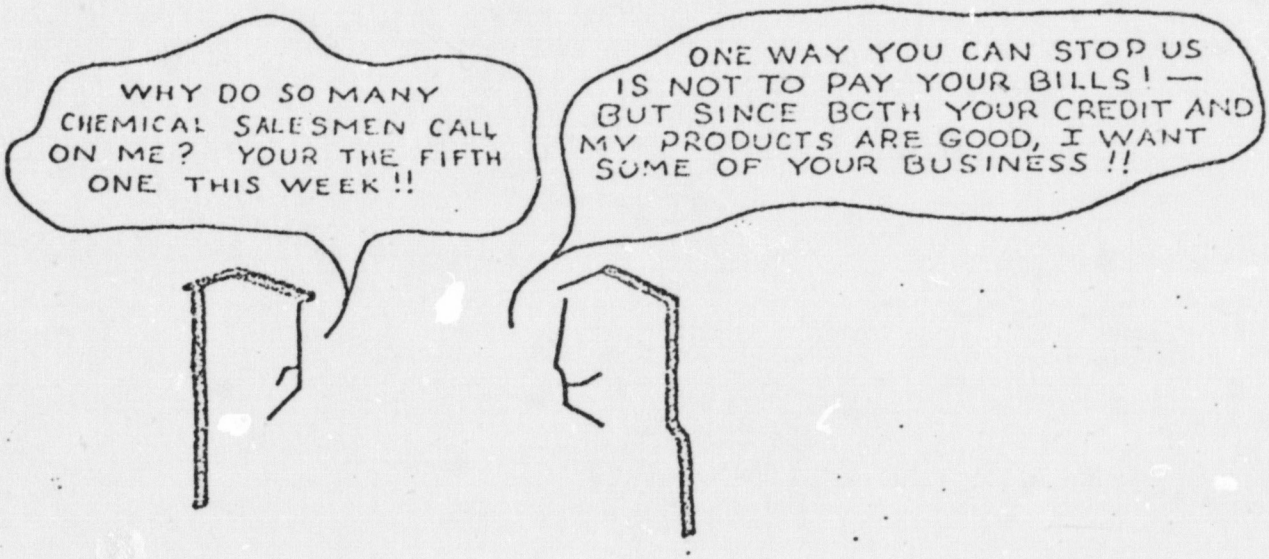
We have to take this up with the City Council.

ANSWER:

"Mr. Customer, how long have you been with the city?" He will generally answer 5, 10 or more years. "Mr. Customer, I know

the Council follows your recommendations on the use of chemicals as you are the only one who knows exactly what you need. I am sure you have the authority to order a small quantity of an item such as this. After you see what it does you can then recommend the purchase of a large quantity."

Many times this is a lame excuse to avoid buying or making a decision. The important thing for you to find out is if he has the authority to buy. If he has authority, sell him. If it is true he cannot buy don't force him to sign an order as it will only be cancelled or returned.



BUYING SIGNALS YOU WILL HEAR -- OFTEN

1. How much is it?
2. How does it come packed?
3. How is it mixed?
4. How long will it last?
5. How much would I need?
6. Will it deteriorate?
7. How much will it cover?
8. Sounds good
9. Looks good.
10. Can you use this for such and such?
11. Looks okay, but I have plenty on hand.
12. Who in the area is using it?
13. When are you coming back?
14. Is it safe to use on such and such?
15. Will it do this or that?
16. Any other sign of approval from the prospect such as a nod of approval.

Now read and thoroughly master the methods of closing a sale and how to turn objections into a sale as illustrated in the "Gears of Selling".

SOME POTENTIAL CUSTOMERS

INSTITUTIONS

Schools
School Cafeterias
Colleges
College Cafeterias
College Student Union Buildings
Fraternity & Sorority Houses
Hospitals
Homes for Aged
Orphanages
Churches
Clinics
Hotels
Tourist Courts
Buildings
Clubs

AIRPORTS

GARAGES

GRAIN ELEVATORS

INDUSTRY

Manufacturing Plants
Packing Houses
Food Plants
Food Lockers
Oil Field Drilling
Auto Dealers
Bottlers
Filling Stations

DEPARTMENT STORES
RETAIL STORES

Restaurants
Drug Stores

'In fact, every business that employs people, uses and needs something you have to sell.

CITIES

City Hall
City Auditorium
Municipal Buildings

Park Department
Garbage Department
City Sewage Department
Water Department
Police Department
Fire Department
Sanitation Department
Street Department

COUNTIES

Court House
Jail
County Garages
County Schools
County Highway Department
County Homes and Hospitals

STATE

Highway Department in Several Locations
State Hospitals, Schools, etc.

ARMY, AIR FORCE & NAVY BASES

Officer's Club
Enlisted Men's Club
Cadet & C.P.O. Clubs
P-X's
Special Services
Local Purchases
Purchasing and Contracting

OUR CONTAINER SIZES:
55 Gallon Container
35 Gallon Container
20 Gallon Container
6 Gallon Container

We sell direct to users. Noth is sold through retail stores small packages nor is anythin sold for re-sale.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, Inc., a Texas Corporation,

Plaintiff

-against-

MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM,

Defendant.

Civil Action No. 75-CV-170

SUPPLEMENTARY ATTORNEY'S AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION

STATE OF NEW YORK:
: ss.:
COUNTY OF ALBANY :

NEIL H. RIVCHIN, being duly sworn deposes and says:

1. That I am an attorney duly admitted to practice law in the State of New York and before this Federal District Court and am associated with O'Connell and Aronowitz, P.C., attorneys for the Defendants herein. I am fully familiar with all the facts and circumstances of this case and with the facts set forth in this affidavit.

2. In 1973 Defendant Waldman had sales amounting to Two Hundred Two Thousand Six Hundred Twenty-six and 00/100($202,526.00) Dollars as set forth in Paragraph 14 of the Affidavit of Michael G. Breslin, dated May 16, 1975, submitted in support of Plaintiff's motion. As a result of writing over Two Hundred Thousand Dollars in volume in that year, Defendant Waldman received a vacation bonus package in the amount of Two Thousand ($2,000.00) Dollars as set forth in Exhibit "A" which is attached hereto. In 1974 Defendant Waldman's sales amounted to Two Hundred Ten Thousand

Eight Hundred Three ($210,803.00) Dollars, an increase over 1973 sales; however, Defendant Waldman received a vacation package bonus in the amount of One Thousand Two Hundred Fifty ($1,250.00) Dollars, less than that which he had received the previous year, as set forth in Exhibit "B" which is attached hereto.

3. As a part of the consideration to be paid by the Plaintiff to Defendant Waldman for entering into the "District Sales Manager's Agreement", Defendant Waldman was to receive a two (2%) percent override on sales made by salesmen whom he had trained. This commission amounted to approximately Four Thousand ($4000.00) Dollars each year as additional compensation to Defendant Waldman, as shown in the ledger sheet and letter dated January 24, 1975 which are attached hereto as Exhibit "C".

Neil H. Rivchin

Sworn to before me this
9th day of June, 1975

Notary Public, State of New York

GLORIA M. EDMUND
Notary Public in the State of New York
Qualified in Albany County
My Commission Expires March 30, 19[illegible]

MEMO

261a

EXHIBIT "A"

Gay Dennis	DEPT.-LOCATION Payroll Dept. - Texas
OM Ralph Young	DEPT.-LOCATION Hackensack
BJECT Mel Waldman #2381	DATE 3/4/7

MESSAGE:

Dear Gay:

Please send Mel Waldman a $2,000 check instead of the trip which he won for writing over $200,000 in volume in 1973.

Thanks for your help.

Very best regards,

RIGINATOR - DO NOT WRITE BELOW THIS LINE — SIGNED Ralph Young

REPLY:

OK

DEPT.-LOCATION	SIGNED	DATE

SEND PARTS 1 AND 3 WITH CARBON INTACT - PART 3 WILL BE RETURNED WITH REPLY

ORM 1-3

DETACH AND FILE FOR FOLLOW-UP

WRITER'S CO

EXHIBIT "A"

(57)

262a
EXHIBIT "B"

January 13, 1975

A03
D0 2381

To: Gay Dennis
From: Ralph Young

1974

Re: Year-End "Vacation" Packages for
National Award Winners

Code 75

Dear Gay:

Please send out checks, air mail special, to the following men:

Salesman	Code #	Amount
Mel Waldman	2381	$1250.00
Nate Wachman	4300	1000.00
Jim Gusky	2156	1000.00
Art Solomon	2220	1000.00
Jim Zampino	4344	1000.00
Jay Epstein	2020	1000.00
Bernie Hurewitz	2672	800.00
Fred Levens	2075	800.00
Irv Weinstein	2137	800.00
Bernie Shapiro	2068	800.00
Jim Bailey	2490	500.00
Sam Knopp	2390	500.00
Mike Leblang	2595	500.00
Herb Mitzner	2003	500.00
Richard Monteith	2661	500.00
Marc Rosenzweig	2499	500.00
Nat Cohen	2369	500.00
Howie Seidenberg	4374	500.00
Mort Krell	013D	500.00
Mal Tarkin	2531	500.00
Wells Van Pelt	2160	500.00
Joe Cooper	2339	500.00
Graham Dean	2793	500.00

1250.00
73.13 F
250.00 F
25.00 S
701.87

Code 75

A-1846
1-14-75

Thanks,

Ralph Young

EXHIBIT "B"

RY:gr

01 1/4/1 Kennedy

(57) 263a

EXHIBIT "C"

A03

D023381

January 24, 1975

To: Gay Dennis

From: Hal Kimmel

WDM

Re: Year-End Compensation for District Managers

Dear Gay:

Please send checks to the following district managers:

Joe Cooper #2339:	Dick Albert Verlane Walsh	$2531.82
Mort Krell #013D:	Al Locher	1956.40
Jim Zampino #4344:	Al Coldon	1961.62
Mel Waldman #2381:	Dick Reardon Mel Wilcove	3953.72
Sid Keiser #2770:	Pat Sicili6	1639.28

3953.72 S.
231.29 FIC.
790.74 FWH
79.07 SWH
2852.62

Many thanks,

Hal Kimmel

HK:gr

Code 75

EXHIBIT "C"

A-1993
1-28-75

264a

WORKING DISTRICT MANAGER

NAME: F Watson # 202381

YEAR: 1971

SALES MANAGER A Stewart #57

	SALESMEN: NAME	NO.	SALES	RETURNS	NET SALES	%OR AMT. DUE	FOR P/ DEPT.
1	R. Nassiar	2717	58868 -	9673 -	49195 -	10%	9841
2	T. W. Lcove	2599	107373 -	3089 -	104284 -	10%	21126
3	R. Rondson	2779	113557 -	226 -	113331 -	10%	8477
4							
5							
6							
7							
8							39777
9							
10							
11							
12							
13							
14							
15							
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17							
18							
19	C/L # A 0541						
20	2/10/71						
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36							

VICE PRESIDENT OR DIV. MGR.

EXCERPTS FROM DEPOSITION OF NORMAN STEINMAN
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, Inc., a Texas Corporation,

Plaintiff,

Civil Action
No. 75-CV-170

- against -

MELVIN R. WALDMAN and MELVIN R. WALDMAN
d/b/a Dynachem,

Defendants.

EXAMINATION BEFORE TRIAL of Plaintiff, USAchem, Inc., a Texas Corportion, through Norman Steinman held pursuant to Notice of Deposition dated May 23, 1975 on the 29th day of May 1975 at 11 o'clock a.m. at the offices of O'Connell and Aronowitz, P.C., 100 State Street, Albany, New York, before Doris Schlamowitz, Certified Shorthand Reporter and Notary Public in the State of New York.

APPEARANCES:

TODOLOWSKY, SCHLINGER & BIALOCK, ESQS., 1900 Southland Center, Dallas, Texas, Attorneys for Plaintiff (NEAL E. YOUNG, ESQ., of Counsel).

DeGRAFF, FOY, CONWAY & HOLT-HARRIS, ESQS., 90 State Street, Albany, New York, Attorneys for Plaintiff

APPEARANCES:
(Continued)

(MICHAEL BRESLIN, ESQ., of Counsel).

O'CONNELL & ARONOWITZ, P.C., 100 State Street, Albany, New York, Attorneys for Defendants (NEIL H. RIVCHIN, ESQ., and BARRY R. FISCHER, ESQ., of Counsel).

BY MR. RIVCHIN:

Q Mr. Steinman, would you describe your duties as an employee of National Chemsearch?

A As divisional manager I supervise a personal group of salesman. I also supervise sales managers, the training of them; I train sales manager trainees.

Q As a part of your capacity with National Chemsearch, are you also involved in interviewing prospective employees?

A Would you qualify what you mean by "Interviewing prospective employees"?

Q Do you inter--do you talk to individuals who are interested in obtaining employment with National Chemsearch?

A On occasion.

Q And in 1968 did you have occasion to talk to the Defendant, Melvin R. Waldman, with respect to employment with National Chemsearch?

A I did.

Q And can you tell me approximately when that conversation or discussion occurred?

A (No answer)

Q To the best of your knowledge.

A To the best of my knowledge, the middle of

February of 1968 or '69 in a hotel room up here in Albany.

Q Can you tell me how that -- what precipitated that conversation? Did Mr. Waldman come to you in response to an ad that your employer ran in a newspaper?

A Mr. Waldman sent in a resume in regard to an ad that we had run in the Albany papers for an opportunity to work for National Chemsearch.

Q To the best of your knowledge, do you recall the substance of that ad?

A Do I recall the substance of the ad?

Q The substance of the ad.

A I'm afriad I couldn't tell you what was in it other than it was a pretty similar ad to what we currently ran in the newspapers.

Q Which is what, if you can recall?

A It's an ad denoting an opportunity for someone, a person, to become gainfully employed by National Chemsearch with the opportunity of making himself an above-average income and with the phone number to call for an interview or an address to write if unable to call.

Q You say that Mr. Waldman responded to the ad by writing to your office in New York?

A That is correct, I believe.

Q And do you have a copy of the letter that Mr. Waldman sent in response to that ad?

A Do I have a copy?

Q Do you have a copy with you?

A No, I do not.

Q Does the company have a copy of it in their files?

(Discussion off the record)

MR. YOUNG: I'm sure -- if it exists, we have it. They turned over the file to us.

THE WITNESS: Do you want to stop for a second?

(Discussion off the record)

THE WITNESS: Go ahead.

MR. RIVCHIN: Is it in?

MR. FISCHER: Yes.

BY MR. RIVCHIN:

Q If that letter does exist could we have a copy of that?

MR. YOUNG: Yes.

Q I assume that you responded to Mr. Waldman's letter?

A I called him on a phone to arrange an appointment with him in Albany.

Q Can you recall what the gist of that conversation was?

A Not really; to the best of my knowledge, only that -- "Your letter was very brief, but just judging from the sound of it it would appear that we ought to get together. You might have something that we're looking for and we might have something you're looking for."

Q You don't recall Mr. Waldman requesting information about your employer?

A On the telephone?

Q Yes.

A Quite frankly I don't really recall if it was a call of what we term a telephone screen or if I just arranged an appointment with him.

Q I see.

A I really -- it's a number of years back.

Q But in any event, you don't recall Mr. Waldman requesting any information aside from any information that you might have offered him?

A He might have asked me what the job was, what

National Chemsearch was and if he did I most likely told him. We don't hide anything on the phone. I can't just say to you that he did because I don't remember.

Q I see. You set up an appointment with him and that was in Albany?

A That's correct. I was coming up to Albany that week.

Q And it was -- at what location again?

A I didn't say which one. It was a motel in Albany.

Q It was a motel?

A (No answer)

Q You don't recall?

A Howard Johnson, I believe. It was in the middle of January -- the end of January that we started interviewing or beginning of February. I don't remember the exact date.

Q At that interview was there anyone else present aside from you and Mr. Waldman?

A Not that I know of.

Q And can you tell me what the substance of the interview was, what you said to him and what he said to

you, to the best of your recollection?

A What I can tell you would be a generalization in the respect that I would assume on the first interview that we had he asked me questions in regard to National Chemsearch, which I answered to the best of my ability. Possibly at that point or during that first interview I might have asked him a couple of questions regarding Melvin R. Waldman.

Q You don't recall specifically what questions might have been asked or what responses might have been given to any questions?

A Not to sound facetious: Do you remember a conversation that you had seven years ago, what questions you asked --

Q Let me ask you --

A I asked questions about him, what he had done in the past. If I asked him at that time I interviewed him, I don't recall.

Q Let me ask you this question: Are the -- do you normally at interviews offer information about the employer?

A If you recall, based on my previous remark, most likely I let him ask questions regarding Chemsearch

and I answered them. That's -- the foremost part in that initial interview is for me as a representative of the company, if I'm interested in the individual opposite me, to sell the company and I sell it by allowing the man to ask what questions he wants and my answers back to him.

Q But --in other words, if a man does not ask questions about the company, you wouldn't offer the information; is that --

A No, I wouldn't say that. Then I would go about my way of offering the -- telling him.

Q Assuming that an individual didn't ask any questions about the company, what would you --

MR. YOUNG: I will object to the form of the question.

You may answer.

A I would say this: "Mel, let me tell you a little bit about National Chem." And I would tell you a little bit about it. If we're going back seven years then we wouldn't have been 56 years at that time, but we would have been 49 years old. We were still listed on the New York Stock Exchange at that point. We were an international

company. We have four offices, divisional offices, in the United States; offices all over the free world and we're regarded with respect as one of the leaders in the industry and I would go on that basis.

Q Along those same lines, would you offer any information with respect to particular employment that was being offered this individual?

MR. YOUNG: I object to the form of the question.

You can answer.

A I'd like you to repeat because I don't think I caught it.

Q Assuming that the individual failed to ask you what type of duties he would have as an employee in responding to this particular ad that this particular company ran in the newspaper, if I assume you were going to offer him any information as to the description of the job that he would be doing, what would that description entail?

A Well, again, at that point it would be very light and very brief because I really don't know if I want to continue wasting my time with an individual at that point. I would lightly tell him

what we do, what we sell, but would not get drastically or deeply involved in anything.

Q So, in other words, basically the purpose of this first interview is to find out as much as you can about the individual to see if it's worth spending any more time on him?

A The purpose is not to find out as much as you can about him. It's to make a rather quick evaluation; a screening process; let's use that term. That's what it is, a screening interview, which I would ask him a couple of questions and then based upon his appearance, his way of answering, the impression that the man makes upon me as to whether or not I want to invest two or three hours in additional interviewing the man.

Q About how long did that interview take?

A Approximately an hour, maybe an hour and a half.

MR. YOUNG: You are talking --

MR. RIVKIN: The first interview with Mr. Waldman.

A About an hour, an hour and a half; in that area.

Q At the culmination of the interview how did you leave

the job status with Mr. Waldman? Did you make another appointment with him or did you tell him you'd get back to him or --

MR. YOUNG: I'm going to object to the form of the question. You've got about three in one there.

MR. RIVCHIN: All right.

Q Just -- if you can answer the question then.

A I would assume, if my memory serves me correctly to the best of my knowledge, that I gave him a brochure which included an application, an aptitude test and a little backup information on the company and made an appointment to see him again that week; whether --

Q I see. As far as the application is concerned and the aptitude test, did you give him any instructions to complete those documents?

A I did.

Q And those would be -- were to be completed by Mr. Waldman prior to the next appointment?

A Correct.

Q And to the best of your knowledge did Mr. Waldman in fact complete those documents?

A To the best of my knowledge.

Q And there did occur a second appointment with Mr. Waldman?

A There did.

Q And that appointment, you say, came later in the week?

A It could have been the next day. I don't really recall.

Q Can you tell me who would have been present at that second appointment besides you and Mr. Waldman?

A No one else.

Q No one else. And that, again, occurred in Albany?

A Some hotel.

Q Can you tell me what transpired at that meeting?

A Well, I asked Mr. Waldman questions based on what he had put down on his application. He answered the questions, gave Mr. Waldman the opportunity to ask me any additional questions that might have occurred either to himself or to his wife in the time that elapsed since we had last seen each other.

Q I'd like to show you Plaintiff's Exhibit Number 3 and ask if you recognize that?

A I do.

Q Could you describe it for us, please?

A It's the application that Melvin Waldman filled out.

Q I see. Now, with reference to the aptitude test that was given him, would the company still have possession -- a copy of that test?

A I really don't know.

Q Do you know if it's normal -- if it's the company's normal practice to maintain such tests in the employee's files or somewhere in the possession of the company?

A Let me stand corrected on my statement. There's a possibility that we did not give him a test. I'm not sure. If we did give him one, there's a possibility that we still have it. It's not something that's done one hundred percent of the time. I'm not an interviewer. I went out on interviewing trips to fill in for someone who couldn't make it and I might not have all the paraphernalia that they normally carry. So there is no one hundred percent guarantee that he ever took the aptitude test.

Q At this particular time who would, in fact, have interviewed Mr. Waldman?

A I don't understand your question.

Q Well, you said that you were filling in for somebody --

A One of our interviewers usually makes the interview trips. We have a Personnel Department out of New Jersey.

Q This would be somebody out of the New Jersey office?

A Or at that time out of the New York office.

Q May I have that back?

A (Handing)

Q All right. At this second meeting, was there any decision made on Mr. Waldman's employment with the company?

A In what respect?

Q In whether he was to be hired or not.

A We do not hire on the road.

Q Then what, if any -- if anything, did you tell Mr. Waldman with respect to his possibility of being hired?

A One of two things occurred, and, again, because of -- from 1968 to now -- the inability of me really

to remember one hundred percent as to whether I saw him a third time on the road, which is a practice of ours, and/or wound up that interview with a statement to the effect that we would like to see you in our regional office in New York and make a final decision at that point.

Q Did there come a time when you did, in fact, see Mr. Waldman in New York City?

A By all means.

Q And can you tell me who was present at that meeting?

A You mean during Mr. Waldman's interview in New York?

Q Yes.

A Mr. Waldman was interviewed by Mr. Robert Greenfield and myself.

Q And what was Mr. Greenfield's capacity with the company?

A Mr. Greenfield is a Director of Personnel.

Q What was the substance of that interview?

A By "substance," you mean what?

Q What did you say to Mr. Waldman and what did he say to you?

A I said very little initially to Mr. Waldman during that interview. Let me give the purpose of that interview: Is for another head to take a look at the applicant, another person, and to coordinate our feelings as to whether it is a right decision or a wrong decision as to hiring that individual, whoever it might be. Therefore, Mr. Greenfield controlled the majority of the initial interview or the basic interview.

Q Did there come a time during that meeting when Mr. Waldman was advised that he was hired by the company as an employee?

A Certainly, at the end of the interview.

Q And who informed him of that decision?

A It could have been simultaneous where both Bob and I put our hands out and shook his. He could have done it first or I could have done it first.

Q Do you recall if Mr. Waldman requested any information with regard to advancement in the company?

A Whether he requested it or not it's ninety-nine percent explained to every individual when interviewed, the opportunity that exists for anybody

that comes to us, for advancement.

Q Could you clarify what that opportunity is?

A Well, the opportunity is into a form of management. If the man is, A, desirous of it and, B, has the capability for it.

Q And at any time during Mr. Waldman's employment with the company did he express a desire to you of advancing into management?

A He most certainly did.

Q At this particular meeting was a contract of employment signed by Mr. Waldman?

A Are we back in New York for Mr. Waldman's interview?

Q This is Mr. Waldman's interview.

A At the end of it, right; it's normal procedure, sales technical agreement.

Q I'd like to show you that which is labeled "Plaintiff's Number 3," and ask if you can identify it?

A It's the representatives' --

MR. YOUNG: Four.

MR. RIVCHIN: Is it four?

MR. YOUNG: Yes.

MR. RIVCHIN: Okay. I stand corrected. Exhibit 4.

A This is a copy of the Sales Representative's Agreement signed by Mr. Waldman on the 19th day of January, 1968.

Q Do you recognize the signature of the individual who signed it on behalf of the company?

A It appears to be that of Leonard Rosenbaum.

Q And what was his position?

A I believe at the time he was Vice-President.

Q Was he present at that meeting at the time?

A At the meeting or at the interview?

Q At the meeting. Was he in Mr. Waldman's presence?

A I don't believe so.

Q Was he in the -- was he in New York -- did he sign this at the time of the interview?

A To the best of my knowledge.

Q After this document was signed, I assume, the meeting broke up?

A Well, let's put it this way: Before the document was signed it was explained to Mr. Waldman and gone over and highlighted and Mr. Waldman was given an opportunity to read it and any questions

that he had would have been graciously explained to him. We point out certain things to every man --

Q Excuse me. That wasn't the question that I asked.

A I just want to make it clear, before he signed that it was explained to him.

Q I would like you to respond to the questions that I am asking.

A All right; ask your question again.

Q After the document was signed, the meeting broke up, I assume?

A No, it doesn't -- well, when you say "the meeting broke up," you mean Mr. Waldmann picked up and went home?

Q Yes.

A Incorrect.

Q What happened?

A A number of things. I don't recall. I would assume that we went out for lunch. If we didn't, then one thing did happen, and that's again normal procedure, we really liked the opportunity for a man at that point to call his wife -- and they are generally sitting at home on pins and needles wondering how the hubby made out. Did he get the

job? Didn't he get the job?-- which did transpire at that time with Mr. Waldman; and then after that-- now, I can't give you the sequence, whether lunch was first and the call was second or the call -- generally the call goes first.

I don't recall if I did get on the phone and say "Hi" to the wife. Again, normally I do, and after that we went through what we call an orientation, which is taking the sample bag that the applicant, in this case Mr. Waldman, received in the office and go through some paraphernalia in there, giving him some homework to study prior to his initial training.

Q Then what would happen after that?

A By that time the man has been in the office a good five or six hours. He's pretty petered out and we've just about covered everything that we have.

If the Vice-President -- if he's free, if he's not tied up in a meeting, if he's in town, he generally would have come out and said hello and welcomed the applicant. Obviously, he was tied up in a meeting. However, I don't recall, but the

salesman then goes home or, at least, to our knowledge goes home.

Q To the best of your knowledge or recollection, how much time transpired from the beginning of the interview until the time that Mr. Waldman signed the contract?

MR. FISCHER: I think he already answered that, five to six hours.

MR. RIVCHIN: No, he didn't.

THE WITNESS: No, five to six hours -- let's say Mr. Waldman came down at ten o'clock because he hadn't flown, so he took the train or drove, I don't remember, so he probably approached our office ten, ten-thirtyish; maybe that's the time we started. By -- by the time he signed the contract did you say?

Q (Shakes head yes)

A Pretty much the contract is the last thing that happens. It could be around three o'clock. Again, I don't really recall.

Q So you say about five hours then?

A IN that vicinity. Could be four. Could be five and a half. It all depends.

Q How, prior to Mr. Waldman signing the contract was he given an opportunity to examine it?

A He most certainly was.

Q And did anyone explain any of the terms of the contract to him?

A It was.

Q And who, do you recall, explained the terms of the contract to him?

A I did.

Q You did?

A That's right; highlighted the contract. The man is given the opportunity of taking the contract and sitting down and reading it from Paragraph 1 all the way through prior to his signing. We highlight a few things that we think should be important and if he does not want to sit and read the whole thing, then he signs it and if there are questions when he gets home he calls us and we explain them.

Q Do you recall if Mr. Waldman took the opportunity to read the contract?

A I don't really think he did.

Q When you say you highlighted the contract to him, what types of things did you highlight?

A If you furnish me a copy of his contract, I'll go over them with you.

The first thing that we point out is the agreement that was made that day. We really just read it off the top. This is an agreement made and entered this 19th day of January and so forth. We highlight Four, which is the covenant clause and that's where it states that the representative -- in this case Mr. Waldman --

Q Excuse me.

A Yes.

Q I know what the contract states, but I'd like to know how you highlighted it.

A I'm explaining it to you. We highlight Paragraph Four, which is the covenant clause which Melvin -- let me -- you want me to give you a mark on this; is that what you'd appreciate?

Q Yes.

A Do you mind if I take a couple of minutes to look this over because this is a little different than what we're using and I want to make sure I covered what I covered? If you have no objection on that?

(Discussion off the record)

A Okay. If you are ready. "Hel, what we have here is a Sales Representative Agreement, which I don't know if you are familiar with it or not. It's a pretty-standard agreement. There are some things in here that I would like to point out to you. If you would like to, I'll be only too happy to put you into the office and let you sit down and go over this from stem to stern." At which point the man usually says, "Okay." Let's me point out a few things. The top part here, which states that this is an agreement made and entered into this 19th day of January, 1968 between National Chemsearch Corporation and Melvin R. Waldman hereinafter referred to as "Rep". Let me take Number 1 here, which states the company hereby employs the representative subject to the conditions hereinafter set forth as the sales rep on a commission basis in the territory specified in Paragraph Four or such other territory or territories this company in its discretion may from time to time assign to the representative.

Paragraph Three pretty much just outlines

what you are going to be doing. That's the sales of various maintenance products.

Number Four is kind of an important-- let me go a little negative here, which I don't like to do, but let's be very realistic. In the event that we terminate our relationship for any reason whatsoever -- Hal, your part or our part, our representatives, expressly covenants and agrees that during the term of his employment and -- by the company and for a period of eighteen months immediately following the expiration or termination of such employment for any reason, he will not at any time for himself or on behalf of anybody else, firm partners, whatever have you, sell the same type of products for them in the territory listed below, Albany, Greene and Schoharie Counties in the State of New York.

What it simply means, you can any place else in the world. You can go wherever you aren't selling for us, but not in the assigned territory. But on the next page, and generally they have a copy of this as we are going over this.

The other part of this -- most of these

really quite honestly are for the benefit of the company, as I shall read -- most of these are for the benefit -- as you can see as you go through them, there are a bunch of dos and don'ts and the next dos and don'ts is that you will not divulge in any way to anybody any trade secrets, information or anything along these lines.

Number Seven, it's agreed that if the representative's employment by the company is terminated for any reason, no commission shall be due or payable to representative or orders secured by him but not shipped as of the effective date of such termination.

Number Eight is really important because what it states there: Representative agrees during the term of said employment that he will devote his entire time and attention to the duties and attention to the business and interest of the company and that he will perform to the entire satisfaction of the company. And what that really means quite simply is that at no time do you moonlight and hold down a second job.

Number Nine, this agreement shall be

affected upon execution and may be terminated at any time by either party without notice. Being a commission job you don't have to give us notice and we don't have to give you notice.

I believe -- that's about what I highlight.

Q Do you recall if at any time prior to the signing of the contract Mr. Waldman was at all reticent about signing it?

A Not to the best of my knowledge.

Q Did he request that he be able to take it home with him and sign it at home?

A He might have, but I honestly don't remember.

Q Do you recall if he requested that he have an attorney examine it before he signed it?

A He could have; again, but I don't remember it. Let me explain this to you: In qualification of our agreement over there, we don't look to bamboozle anybody into signing it. We have had on occasion people who have wanted to take it home, let their attorneys go over it with a fine toothcomb. Basically, it's not company policy to do so. If we are relinquishing confidential materials to the

person, that person is going to be in our employ prior to getting it. By the same token, the man is not investing any money with us and if he signs that agreement and one day later, two days later, a week later, two weeks later, calls us up and says, "Hey, that contract stinks. I don't like it. I don't want to work for you;" that's the end of it. There's nothing binding and says he has to devote his life to us in there.

Q Do you recall telling Mr. Waldman that it's just a formality and that he should go ahead and sign it?

A I could have used the word "formality." I could have used the words -- "It's company policy that we all go through and sign it." I might have told him at that time that I signed -- 1968 -- that I have signed two contracts with the company, one as salesman when I originally started, one as a sales manager when I became one. I could have. We treat each case, each -- salesman as an individual and there's no stereotyped words that we use right down the line.

Q All right; after this meeting terminated, what was

the subsequent contact that Mr. Waldman had with the company?

A Well, by "company," you are going to refer to me, I assume?

Q To you or any other employee of the company.

A I couldn't tell you what contact he had with other employees, but to Mr. Waldman, basically, I was the company, as I am to all the salesmen that I have worked with and/or do work with.

Q What was your next contact with Mr. Waldman?

A Well, again, I'm going to have to go on, to the best of my knowledge. Generally, I would have called the man within the first week at home to say, "Hi" and/or if I did not call him where he had not started his actual training yet, I would have set up a date for him to call me.

Most likely at that time I would have called him because I was not in the office too frequently and it was a lot easier for me to reach him than for him to try to get me; and I called him a few times prior to his initial week of training to see if he had any questions, if everything was okay, if there was anything I could do for him.

Q Did there come a time when Mr. Waldman was given a pamphlet called the "Gear of Selling"?

A Mr. Waldman could have been furnished that pamphlet either at the hotel during our initial interview -- I should say second interview and/or, if not he definitely received it along with the other paraphernalia he took home with him from the New York office.

Q Can you tell me what the purpose of that pamphlet is?

A I can tell you what the pamphlet is. It's a confidential piece of material.

Q Well, can you tell me how the pamphlet is used by the company?

A Well, it's to give the new man an idea of our approach to sales and, again, as I mentioned, it's a confidential piece of material that we try to use in adapting to each individual that we work with. We do not adapt the individual to the book. It's an outline. It's a guide form to follow, hopefully to enable him to become successful in making money.

MR. RIVCHIN: May we have this marked Defendants' Exhibit "A"?

MR. YOUNG: Can that be subject to the protective order?

MR. FISCHER: (Shakes head yes)

MR. YOUNG: Yes?

MR. FISCHER: Yes; I am sorry.

(Document marked as Defendants' Exhibit "A" for identification.)

Q Now, I ask you to examine Defendants' Exhibit "A", Mr. Stolzman, and identify it for us.

A It's National Chemsearch's Gears of Selling.

Q And would this have been the booklet that was given to Mr. Waldmann?

A I believe so.

Q Now, after the meeting in New York, you had subsequent contacts by telephone with Mr. Waldmann?

A Right.

Q Did you at some occasion have a personal contact with him?

A Of course.

Q When would that have been?

A When I trained him.

Q And when you say "training him," could you tell me what that would entail?

A Well, I'm not sure if my first personal contact with him was a week of training or a week that he spent -- not a week -- excuse me -- a couple of days that he spent in New York at a New Man's Meeting.

Q Let's take one at a time. I'd like to know when you say you trained him, what that would have entailed.

A It would have entailed my coming up here to Albany and I believe spending -- four days' work with Mr. Waldman in his territory; helping him sell; showing him how we do things -- he receives full commissions on everything sold. I don't. -- working with him in the evenings; going over things; alleviating some of his basic fears that he may have, which is very normal for anyone entering into a new profession; reassuring him of the intelligent decision that he made for himself and his family; taking him -- riding with him -- excuse me -- into two different accounts, two different calls; showing him how to work a territory; how to approach customers; how to sell; how to do everything; alternating calls with him; helping him; that type of training.

Q How, when you say you showed him how to make calls, how to approach customers, did you do the actual approaching or did Mr. Waldman make the advances?

A In some calls I handled the entire call; in other calls we split it. In other calls he handled the entire calls. It would all depend. If it were the beginning of a week and if he did not have qualms the first day that I was with him on making the first few calls, then he made them, so I could see which way he was going and what I could do best to help him.

Q Do you recall what actually happened with Mr. Waldman, whether you made the calls or he made the calls or whether it was split?

A I just explained to you, it's a combination of it all.

Q Well, I'm asking -- you were explaining what you would have done.

A What I do.

Q What I'm asking, if you do, in fact, recall what was done.

A I do, in fact, recall that I made some calls, that he made some calls and we both made calls

together. I can't tell you exactly what day it went that way because I don't remember myself.

Q Okay. Now, during this training period did Mr. Waldman express any reticence to you about continuing with the company?

A Mr. Waldman was continually expressing reticence about continuing with the company.

Q Do you recall specifically what he said?

A I don't recall his words. All I know is that he was an extremely successful salesman.

Q That don't what I asked you.

A I know. I'm trying to answer your question. I just can't give you a flat-out answer. I think the fears that he displayed at that stage were very common and normal fears. Did I make a right decision? Am I going to be successful? Is this really the right business for me? And in whatever is best you try to alleviate all these doubts from the man.

Hopefully you show him business out there because if you show him business, then there's money in his pocket.

Q Do you or the company have the sales that were made during this training period?

A I don't, and I don't really know if we had retained our training records that far back.

Q Well, doesn't the company keep a record of commissions that are paid to the employee?

A Certainly.

Q And wouldn't these be included in these records?

A I don't know if the company has-- how far back the company retains commission statements, number one; number two, I couldn't tell you by looking at a commission statement who sold the account and when it was if I were with you. I don't retain my own training schedule more than one year.

MR. RIVCHIN: Mr. Young, I believe in our notice we requested sales reports throughout the entire term of Mr. Waldman's employment and if these reports are, in fact, available, would you agree to send us copies?

MR. YOUNG: As I stated earlier, we hopefully have enroute from Irving, Texas, which is the corporate headquarters, all of Mr. Waldman's commission statements for the entire period of his employment, which is, I believe, the information you are requesting.

As to individual orders, sales by Mr. Waldman, as an order is received in Dallas for processing -- or Irving, it's microfilmed and as soon as they have information that microfilm was positive, the order is destroyed and they're all stored on microfilm as they're received.

The process of going through for seven years and trying to pull out each individual order that was ever sold by Mr. Waldman is just staggering. There might --

MR. RIVCHUN: The material is available though?

MR. YOUNG: That's right. If you all want to go to Irving and get the microfilm scan out, it's available.

Q Mr. Steinman, at any time during Mr. Waldman's employ did you ever advise him that he had -- quote "Protected accounts" -- end quote?

A I believe so.

Q And could you describe for me what you meant by that?

A Well, we explain a protected account system to every man that we hire because that's the way our

sales people work. We do not work in protected territories . A salesman's account is protected for a period of twelve months, which simply means that as long as he has sold that account once in a period of twelve months, no one else from our company can go in -- no other salesman, because I would be the only other person -- can go in and sell that account.

If they do, then they're working for the other salesman. With the exception of extenuating circumstances, such as accounts that might only buy once every thirteen or fourteen months; then we give leeway. We work on a very flexible basis; very few things that we are adamant and down on the road about.

Q Now, also at any time during Mr. Waldman's employ did the company or you represent to him that they would pay half freight on certain accounts?

A Repeat your question, please.

Q At any time during Mr. Waldman's employment, did you or any other representative of the company express to Mr. Waldman that the company would pay half freight on any accounts?

A After a time, and I couldn't tell you how long, Mr. Waldman approached me in regard to splitting freight with some of his accounts and I told him that I would give it some thought and be back to him and if the company agreed to split freight; I don't know, approximately half a dozen accounts or so.

Q Do you recall if these accounts were primarily municipal accounts?

A Off-hand I can remember a few of them, but I can't remember all; Watervliet Arsenal; Town of Cohoes, I believe, or Colonie -- Colonie; V.A. Hospital and there are a couple of others. I'm not sure what they were.

Q Now, during the time of Mr. Waldman's employment did he ever express to you any problems that he had faced with salesmen from Certified Laboratories selling his accounts?

A Problems in what respect?

Q The salesmen selling his accounts.

A He probably mentioned that there were accounts that he was selling that Certified was selling. By the same token that Certified was that Mr. Waldman

of the men that Mr. Waldman trained directly were successful in this business. The men that he worked with and was receiving the overrides on were men that I had trained that were directly responsible to me -- let me rephrase that -- and had later transferred to Mr. Waldman.

Q Do you know if Mr. Waldman trained a gentleman by the name of Rearden in Syracuse, New York?

A I believe he might have trained him for a week.

Q When you say "for a week," is that the normal training period; isn't it?

A No, that's a training trip. It does not consist of all that man's training.

Q Is Mr. Rearden still with the company?

A That is correct. Just for the sake of clarification, a district manager does pretty much all the field training of a man that he works with and he does this in conjunction with phone calls with a sales manager -- in this case, myself. Mr. Waldman in the men that he trained directly, that were hired explicitly to be responsible to him, were not successful with the company.

Q I think you've answered the question.

A I just want to clear up the Reardon and the others.

Q To the best of your knowledge, Mr. Steinman, did Mr. Waldman receive a salary from National Chem in his capacity as district manager?

A No, district managers do not receive salaries. They receive their weekly draw checks, plus any other forms of compensation that are due them.

Q Mr. Steinman, I show you Plaintiff's Number 14 for identification. I believe you've seen this before. Just I'd like you to identify it for the record again.

A It's the District Sales Manager Agreement between Melvin R. Waldman and Nation Chemsearch.

Q Now, Mr. Steinman, I call your attention to Paragraph Number 1 on the front page or first page of this agreement and I ask you to read it to yourself, please.

A (Reading) All read.

Q Thank you. Now, isn't it a fact, Mr. Steinman, that it states in that paragraph that Mr. Waldman will receive a salary of two hundred dollars per week as

a district manager?

MR. YOUNG: I object to the form of the question. The document speaks for itself.

MR. FISCHER: Well, the witness has testified that there was no salary. Now, perhaps--

MR. YOUNG: You are asking him to verify whether that is stated in the contract and all I am saying the contract speaks for itself.

MR. FISCHER: Are you directing the witness not to answer?

MR. YOUNG: Yes.

Q Mr. Steinman, is there a division of National Chem, or whatever the company is known by today, known as Certified?

A Is there a division of National Chemsearch called "Certified"?

Q Yes.

A It's another division. It's another company, right.

Q Are both National Chem and Certified divisions of USAchem?

A I believe they are in the industrial specialty maintenance chemical business.

Mr. Waldman's receiving a two percent override on Mr. Wilcove's sales, considering he did anything entitling it.

Q Shortly after that complaint, was this two percent on Mr. Wilcove's sales discontinued?

A No, it was not. Mr. Waldman's discontinuance was the beginning of '75, I believe, of the two percent override and Mr. Wilcove's complaint went back to his initially finding out he was getting it, which was shortly after -- shortly after he started working with Mr. Waldman as his immediate superior.

Q I just want to recapitulate so that I understand this and you have testified to these. I don't mean to be repetitive, but I want to understand them in a certain time sequence. The two percent override that was eliminated at the end of 1973; is that correct?

A It was eliminated for 1975.

Q But the notification came at the end of 1973?

A I believe the notification was the beginning of 1975, I believe.

Q All right. Now, did there come a point in time when you or someone else in the company advised Mr. Waldman

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MEMORANDUM DECISION and ORDER

USAchem, INC., A Texas Corporation,

Plaintiff,

-against-

75-CV-170

MELVIN R. WALDMAN and MELVIN R. WALDMAN, d/b/a DYNACHEM,

Defendants.

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JAMES T. FOLEY, D. J.

MEMORANDUM-DECISION and ORDER

Plaintiff, USAchem, Inc. (hereinafter "USAchem"), a Texas Corporation, seeks by its complaint and motion for a preliminary injunction to enforce a restrictive sales covenant provision against its former salesman and district sales manager, Melvin R. Waldman, the defendant herein. There are three contractual writings at issue: The first contract of January 1968, commencing defendant's employment with USAchem as a "sales representative" (Pl. Ex. A); the second of February 1970, appointing defendant to the position of "district sales manager" (Pl. Ex. C); and the last executed in May 1972, being an amendation to the 1968 sales representative agreement (Pl. Ex. B).

The defendant resigned from his employment with USAchem in February 1975, under a mutual termination clause not here at issue. He is now engaged in starting his own business under the name of Dynachem, which is essentially similar to his former work with USAchem in distributing "janitorial supplies" and such chemicals

used for cleaning and other purposes.

The essence of this controversy concerns two similar, but not identical, restrictive sales covenants contained in the 1968 and 1970 contracts which purport to proscribe for 18 months after termination of employment with USAchem any similar sales activities within a denominated geographical area. The complaint in this action asks for the relief of an accounting to assess damages, any damages found to have been suffered, punitive damages, costs, and an injunction to prohibit defendant from soliciting customers he formerly serviced when employed by USAchem for a period of eighteen months. The instant motion before the Court seeks a preliminary injunction, which is of course a very drastic measure in that it would be granting the very relief sought in the main action on the complaint before having to offer full proof. This motion was heard on June 2, 1975, and at that time neither party offered witnesses but rather chose to rely on numerous submissions of affidavits, transcripts of depositions and legal memoranda. The submissions were final on the preliminary injunction motion on June 11, 1975.

The defendant, through his attorneys, in his answer and at oral argument upon the motion, has asserted numerous affirmative defenses and counterclaims challenging plaintiff's claims and alleging that plaintiff committed a prior breach of the employment contracts. Defendant claims that the subsequent contract of 1970 nullified the 1968 contract, whereas plaintiff contends that they are supplementary thereto and both currently binding.

Fortunately for this Court, the Court of Appeals, Second Circuit, noting that it was unfortunate that the federal courts had the case at all, has provided guidance in the resolution of this case by their decision in USAchem, Inc. v. Goldstein, 512 F.2d 163 (2d Cir. 1975). This case is remarkably similar to the one at bar and provides really a pattern to follow in this decision because it

involved the same plaintiff and another of their "sales representatives", a very similar contract of employment, and a demand by the plaintiff therein for injunctive relief. With the writing in Goldstein and the traditional standards which need to be clearly demonstrated before a preliminary injunction may issue, it is my judgment that the plaintiff has failed to make an adequate showing of the need and justification for such relief. The motion for a preliminary injunction will therefore be denied.

Although the decision of the Court of Appeals, Second Circuit, in Goldstein did not expressly rule on the decision of the district court below denying preliminary injunctive relief for failure to show irreparable harm, it did expressly affirm the final judgment rendered after trial that no injunctive relief whatsoever was justified in favor of USAchem. In this holding the Court did find that a restrictive sales covenant was valid under either the law of New York or Texas. This holding, however, was a qualified one:

> We conclude that under either Texas or New York law the covenant here was valid to the extent that it precludes Goldstein from soliciting former customers with whom he had done business in his assigned territory. However, insofar as the covenant would preclude him from otherwise competing, it was overly broad and therefore not enforceable.
>
> USAchem, Inc. v. Goldstein, supra, 512 F.2d at 168.

Thus, from my reading, Goldstein held that the contract was marginally enforceable when construed in a limited fashion and the enforcement did not necessarily compel injunctive relief. The action here presents, in my judgment, a less persuasive showing for the grant of preliminary injunctive relief because here we have serious and more complex questions as to the interrelation of three contractual writings which contain variations of the eighteen months sales proscription at issue and this factor must be given serious consideration in the appraisal of the requirement to show likelihood of success. In addition, and perhaps more fundamentally, the

balance of the equities and danger of irreparable harm strongly favor defendant and this in itself mandates that no preliminary injunction should issue.

Preliminary injunctive relief is very drastic because it grants to one party through the power of judicial sanction, relief that would be available only after a full trial on the merits with attendant due process. Consequently, the courts have properly put the burden of proving clear entitlement to this relief squarely on the shoulders of the moving party. American Brands, Inc. v. Playgirl, Inc., 498 F.2d 947 (2d Cir. 1974); Gulf & Western, Indus., Inc., v. Great A. & P. Tea Co., Inc., 476 F.2d 687, 692-95 (2d Cir. 1973); Dopp v. Franklin National Bank, 461 F.2d 873, 878 (2d Cir. 1972); Checkers Motors Corp. v. Chrysler Corp., 405 F.2d 319 (2d Cir. 1969). The elements of proof are well settled:

> The settled rule is that a preliminary injunction should issue only upon a clear showing of either (1) probable success on the merits and possible irreparable injury, or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting preliminary relief.
>
> Sonesta Int'l Hotels Corp. v. Wellington Associates, 483 F.2d 247, 250 (2d Cir. 1973).

The facts of this case, based on the affidavits, indicate that defendant is engaged in an effort to establish a business of his own to support his wife and five children by using skills and knowledge developed while in the employ of USAchem. He has a right to employ such skills even when learned from a former employer and even if it leads to competition with a former employer. H. B. Wiggins Sons' Co. v. COTT-A-LAP Co., 169 F. Reptr. 150, 152 (Cir. Ct., D. Conn. 1909); Purchasing Associates, Inc. v. Weitz, 13 N.Y. 2d 267, 272 (1963); Clark Paper & Mfg. Co. v. Stenacher, 236 N.Y. 312 (1923); cf. Kaumagraph Co. v. Stampagraph Co., 235 N.Y. 1, 9 (1923); see Midland-Ross Corp. v. Yokana, 293 F.2d 411, 412 (3rd Cir. 1961). An employee may relinquish this right for consideration,

but in situations where no present consideration is being paid, courts find it "distasteful" to prohibit or seriously impair any person in endeavoring to earn a livelihood and support his family. Bradford v. New York Times Company, 501 F.2d 51, 58 (2d Cir. 1974); cf. Sarkes Tarzian, Inc. v. Audio Devices, Inc., 166 F. Supp. 250, 278 (S.D. Calif. 1958).

In these terms, when the relative possibilities for irreparable harm are evaluated, it is clear that defendant stands to suffer the most. Defendant's business is in its infant stages; he is presently earning a fraction of the income he formerly earned while employed for USAchem. Moreover, this income is the sole means of support for defendant and his family. On the other hand, USAchem is a large and well established janitorial supply company which has already replaced defendant with two new sales representatives in the sales territory in question. These new salesmen it seems are increasing and expanding their sales in their territories and thereby ameliorating at least to some extent the claimed loss of customers and business by actions of the defendant. USAchem is hardly in jeopardy of extinction in the same manner that defendant might be if the injunction should issue, thus, in this sense, "the right [of defendant] to continue a business . . . is not measurable entirely in monetary terms" since defendant wants to create and sustain his own business "not to live on the income from a damages award." Semmes Motors, Inc. v. Ford Motor Company, 429 F.2d 1197, 1205 (2d Cir. 1970). Although USAchem complains that their two replacement salesmen have not yet obtained the volume of sales which defendant regularly made, it could hardly be expected that such results would be obtained given the short time they have been working and the fact that it took defendant seven years to cultivate his annual sales to the high level he achieved. However, it is again noteworthy that USAchem and its new salesmen are increasing their sales and thus diminishing any loss plaintiff might suffer.

I thus find that the potential irreparable injury to plaintiff is remote as contrasted to a much greater danger to defendant.

Turning to the probability of success on the merits, plaintiff, due to the factual background, fails to carry its burden in that regard. Plaintiff repeatedly emphasizes the validity of their contracts and the fact that Goldstein found them to be valid restrictions. However, a contract "is by no means conclusive on that issue and does not operate as a matter of law to foreclose the trial judge from the exercise of discretion on the application for a preliminary injunction." Imperial Chem. Indus. Ltd. v. National Distillers & Chem. Corp., 354 F.2d 459, 461 (2d Cir. 1965). The distinctions here make this case a more tenuous one for injunctive relief than the case that was made after trial for injunctive relief and rejected in Goldstein. For, in addition to the serious claims by defendant, the plaintiff failed to pay due consideration on these contracts; the contracts themselves do leave unanswered questions at this stage. For example, each of the three contracts describes a different geographical sales zone and consequently imports a different proscription or limitation on sales activity for the 18 month period: The 1968 contract names "Albany, Greene and Schoharie Counties, New York" (Pl. Ex. A, para. 4); the 1970 contract describes the area as "a ninety (90) mile radius of the City of Loudonville, New York" (Pl. Ex. C, para 4); and the 1972 letter-amendment contract adds "Rensselaer and Columbia Counties, New York." (Pl. Ex. B). In light of plaintiff's claim that all contracts are currently valid, it is unclear to me what the limitations on the geographical sales area are claimed to encompass.

The matter of lack of payment of consideration or prior breach by USAchem is also a serious issue. The district sales manager contract specifies two forms of consideration: a two-hundred dollar weekly income and a two percent commission "override". The plaintiff does not deny that payment of these specified amounts were not made

but rather alludes to a quid pro quo provision in the contract which allows other consideration to be substituted. It is however, unclear as to what the substitution was or whether there was any agreement between the parties as to what would be substituted.

One final consideration which is important upon application for the drastic relief of a preliminary injunction is the effect upon public policy. Stamicarbon, N.V. v. American Cyanamid Company, 506 F.2d 532, 537 (2d Cir. 1974). I find that if defendant's business falters or fails during the period of the injunction that there is a danger that he may have difficult financial problems in the support of himself and family. Bradford v. New York Times Company, supra, 501 F.2d at 58. It is irrelevant that the defendant might be succeeding in his business, for the plaintiff's only legitimate interest is any harm which might ensue from violation of their contract for "[i]t is the plaintiff's loss, not the defendant's gain, which (is) material." Harvey & Lund Corp. v. Murray Rubber Co., 31 F.2d 932, 933 (2d Cir. 1929), cert. denied, 279 U.S. 872 (1929).

In sum, Goldstein and the other decisions of the Court of Appeals, Second Circuit, cited herein set a pattern as previously noted for this decision. Restrictive sales covenants may be valid, but only when they are properly limited in scope. It is the firm law and policy of New York, Texas and the federal courts to recognize and respect the right of every man to make a living, especially as here, where there is a serious question of the conflicting contractual rights of plaintiff. In terms of the proof itself, when dealing with such delicate issues, affidavits without more provide a particularly weak basis for the grant of serious injunctive relief. See Semmes Motors, Inc. v. Ford Motor Company, supra, 429 F.2d at 1204-06; Dopp v. Franklin National Bank, supra, 461 F.2d 878-79. An award of money might be sufficient compensation as

occurred in Goldstein for the final relief to be adjudged.

Counsel for both sides are commended for their thorough and knowledgeable briefing of the pertinent federal and state cases, and the presentation of their respective positions in such manner that assisted this Court greatly in the ascertainment of the facts and law involved.

The plaintiff's motion for a preliminary injunction is hereby denied and dismissed.

It is so Ordered.

Dated: June 17, 1975

Albany, New York

James T. Foley

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

USAchem, INC., a Texas Corporation, Plaintiff -against- MELVIN R. WALDMAN and MELVIN R. WALDMAN d/b/a DYNACHEM, Defendant.	Civil Action No. 75-CV-170 NOTICE OF APPEAL

Notice is hereby given that USAchem, Inc., Plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order overruling its Motion for Preliminary Injunction, entered in this action on the 17th day of June, 1975.

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